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Complaint for Permanent Injunction and Declaratory Judgment

(Filed June 19, 1969)

In the

UNITED STATES DISTRICT COURT

For the District of Colorado

Civil Action No. C-1499

Wilfred Keyes, individually and on behalf of Christi Keyes, a minor; Christine A. Colley, individually and on behalf of Kris M. Colley and Mark A. Williams, minors; Irma J. Jennings, individually and on behalf of Rhonda O. Jennings, a minor; Roberta R. Wade, individually and on behalf of Gregory L. Wade, a minor; Edward J. Starks, Jr., individually and on behalf of Denise Michelle Starks, a minor; Josephine Perez, individually and on behalf of Carlos A. Perez, Sheila R. Perez and Terry J. Perez, minors; Maxine N. Becker, individually and on behalf of Dinah L. Becker, a minor; Eugene R. Weiner, individually and on behalf of Sarah S. Weiner, a minor,

Plaintiffs,

vs.

School District Number One, Denver, Colorado; The Board of Education, School District Number One, Denver, Colorado; William C. Berge, individually and as President, Board of Education, School District Number One, Denver, Colorado; Stephen J. Knight, Jr., individually and as Vice President, Board of Education, School District Number One, Denver, Colorado; James C. Perrill, Frank K. Southworth, John H.

Complaint for Permanent Injunction and Declaratory Judgment

AMESSE, JAMES D. VOORHEES, JR., and RACHEL B. NOEL, individually and as members, Board of Education, School District Number One, Denver, Colorado; ROBERT D. GILBERTS, individually and as Superintendent of Schools, School District Number One, Denver, Colorado,

Defendants.

I. JURISDICTION

A. Plaintiffs seek to enjoin the defendants from maintaining, requiring, continuing, encouraging, and facilitating separation of children and faculty, on the basis of race, and further, from unequal allocation of resources, services, facilities, equipment, and plant on the basis of race. Plaintiffs also request specific injunctive relief pertaining to certain resolutions passed and enacted by defendant Board of Education, especially Resolutions No. 1520, 1524, and 1531. Copies of said Resolutions are attached to this complaint.

B. Plaintiffs also seek a declaratory judgment under Title 28, Section 2201 for the purpose of determining questions of actual controversy between the parties, to wit:

1. The question of whether the rules, regulations, resolutions, policies, directives, customs, practices, and usages of the defendants and each of them in denying, on account of race, color, or ethnicity, to the minor Negro and Hispano plaintiffs and other Negro and Hispano children residing in the school district, educational opportunities, advantages, and facilities afforded and available to Anglo children of public school age similarly situated in the school district, are unconstitutional and void, as depriving said

plaintiffs of equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States.

2. The question of whether the rules, regulations, resolutions, policies, directives, customs, practices, and usages of the defendants and each of them in denying to the plaintiffs who attend schools substantially segregated on the basis of race or ethnicity and other children residing in the school district the advantages, educational benefits, intellectual stimulation and practical preparation for a multiracial world afforded by providing an integrated education to other children of public school age similarly situated in the school district are unconstitutional and void as depriving said plaintiffs of equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

C. The jurisdiction of this Court is invoked under Title 28 U.S.C. Sections 1343(3) and (4). This is a civil action authorized by law and arising under Title 42, Section 1983 and the Fourteenth Amendment of the Constitution of the United States.

D. All individual defendants reside within the District of Colorado; defendant School District is a body corporate organized and existing under the laws of the State of Colorado, CRS § 123-30-1 (1964). Venue is therefore proper in this District under Title 28 U.S.C. Section 1391(b) and (c).

II. PARTIES

A. *Plaintiffs:*

1. Plaintiffs Wilfred Keyes, Christine A. Colley, Irma J. Jennings, Roberta R. Wade, Edward J. Starks, Jr., Josephine Perez, Maxine N. Becker, and Eugene R. Weiner, are adults, citizens of the United States and the State of Colorado, and residents within School District Number One, Denver, Colorado.

2. Plaintiff children who sue by their parents and next friends, are minor children, citizens of the United States and the State of Colorado, and residents within School District Number One, Denver, Colorado.

a. Plaintiff Christi Keyes, a minor, sues by her parent and next friend, Wilfred Keyes; she will attend Hallett Elementary School (10.1% Anglo, 84.4% Negro, 3.7% Hispano) beginning in September, 1969. They are Negro.

b. Plaintiff Kris M. Colley, a minor, sues by his parent and next friend, Christine A. Colley, and is a resident of an attendance area detached from the attendance area of East High School by provision of Resolution No. 1520 described hereinafter. If action is taken to implement the recision of said resolution, he will attend East High School (53.7% Anglo, 39.6% Negro, 5.8% Hispano) in September, 1969. They are Negro.

c. Plaintiff Mark A. Williams, a minor, sues by his guardian and next friend, Christine A. Colley, and is a resident of an attendance area detached from the attendance area of Smiley Junior High School by Resolutions

No. 1520 and 1524 described hereinafter. If action is taken to implement the recision of said resolutions, he will attend Smiley Junior High School (23.6% Anglo, 71.6% Negro, 3.7% Hispano) in September, 1969. They are Negro.

d. Plaintiff Rhonda O. Jennings, a minor, sues by her parent and next friend, Irma J. Jennings, and is a resident of an attendance area detached from the attendance area of Cole Junior High School by Resolution No. 1524. If the recision of said resolution is implemented, she will attend Cole Junior High School (3.8% Anglo, 72.5% Negro, 22.2% Hispano) beginning in September, 1969. They are Negro.

e. Plaintiff Gregory L. Wade, a minor, sues by his parent and next friend, Roberta R. Wade, and is a resident of an attendance area detached from Barrett Elementary School by Resolution No. 1531 described hereinafter. If action is taken to implement the recision of said resolution, he will attend Barrett Elementary School (0.3% Anglo, 96.9% Negro, 1.9% Hispano) in September, 1969. They are Negro.

f. Plaintiff Denise Michelle Starks, a minor, sues by her parent and next friend, Edward J. Starks, Jr., and is a resident of an attendance area detached from Philips Elementary School by Resolution No. 1531. If action is taken to implement the recision of said resolution she will attend Philips Elementary School (55.3% Anglo, 36.6% Negro, 5.2% Hispano) in September, 1969. They are Negro.

g. Plaintiff Carlos A. Perez, a minor, sues by his parent and next friend, Josephine Perez, and will attend West High School (54.7% Anglo, 4.6% Negro, 39.8% Hispano) beginning in September, 1969. They are Hispano.

h. Plaintiff Sheila R. Perez, a minor, sues by her parent and next friend, Josephine Perez, and will attend Baker Junior High School (15.4% Anglo, 10.0% Negro, 73.1% Hispano) beginning in September, 1969. They are Hispano.

i. Plaintiff Terry J. Perez, a minor, sues by his parent and next friend, Josephine Perez, and is a student at Greenlee Elementary School (19.1% Anglo, 25.0% Negro, 54.5% Hispano). They are Hispano.

j. Plaintiff Dinah L. Becker, a minor, sues by her parent and next friend, Maxine N. Becker, and is a student at Merrill Junior High School (98.2% Anglo, 0.3% Negro, 0.8% Hispano). They are Anglo,

k. Plaintiff Sarah S. Weiner, a minor, sues by her parent and next friend, Eugene R. Weiner. From January through June, 1969, she was a participant in a voluntary enrollment plan and was a student at Hallett Elementary School (10.1% Anglo, 84.4% Negro, 3.7% Hispano). She has been informed by defendants that there may or may not be space available at said school in September, 1969, and therefore does not know what school she can attend. They are Anglo.

3. Plaintiffs bring this action in their own behalf and in behalf of others pursuant to Rule 23(b)(1)(B), 23(b)(2) and 23(b)(3), Federal Rules of Civil Procedure:

Complaint for Permanent Injunction and Declaratory Judgment

(a) The class which the plaintiffs represent is so numerous that joinder of all members thereof is impractical; said class consists of:

(i) All those school children, who by virtue of the actions of the Board complained of in the First Cause of Action will be attending segregated or substantially segregated schools and who will be forced to receive an unequal educational opportunity beginning in September, 1969;

(ii) All those school children, who by virtue of the actions or omissions of the Board complained of in the Second Cause of Action will be and have been attending segregated schools or substantially segregated schools, and who will be and have been receiving an unequal educational opportunity.

(b) There are questions of fact and law common to all members of the class represented by plaintiffs, namely:

(i) Whether in fact the members of said class, by virtue of the actions of the Board complained of in the First Cause of Action will be attending segregated or substantially segregated schools, and will be forced to receive an unequal educational opportunity, and, further, whether in law such actions of the Board are unconstitutional and void;

(ii) Whether in fact the members of said class, by virtue of the actions or omissions of the

Board complained of in the Second Cause of Action will be and have been attending segregated or substantially segregated schools and will be and have been receiving an unequal educational opportunity, and further, whether in law, such actions and omissions of the Board are unconstitutional and void.

(c) The claims of the individual minor plaintiffs are representative and typical of the class, in that each such plaintiff reflects and illustrates either or both of the types of deprivation complained of in the First and Second Cause of Action.

(d) Said individual minor plaintiffs will fairly and adequately represent and protect the interests of the class, in that said plaintiffs and the class share common objectives and purposes in presenting the issues framed herein, and in seeking a declaration of their constitutional rights.

(e) The prosecution of separate actions by individual members of the class would as a practical matter be dispositive of the interests of other members not parties to the adjudications, and would substantially impair their ability to protect their interests.

(f) The parties opposing the class, *i.e.*, the defendants herein have acted and have also refused to act on grounds generally applicable to the class, as more fully appears herein in the First and Second Cause of Action, and the final injunctive relief and declaratory relief sought herein will apply to the class as a whole.

(g) The questions of law or fact common to the members of the class predominate over any questions affecting or relating only to individual members of the class, and proceeding by way of this class action is superior to any other alternate means available, if any, for the fair and efficient adjudication of the controversy and the granting of adequate relief; thus the only alternative would be the prosecution of separate suits relating to each school within the District, but no adequate relief could be formulated for the constitutional defects of the school system as a whole under such a piecemeal approach, nor would the differences between schools be significant enough to justify such a multitude of suits.

B. *Defendants:*

All defendants are sued individually and in their official capacities:

1. Defendant School District Number One, Denver, Colorado, (hereinafter "School District") is organized and exists under the laws of the State of Colorado. (Colorado Revised Statutes, §§ 123-30-1 *et seq.*) (1964).

2. Defendant Board of Education of School District Number One, Denver, Colorado (hereinafter referred to as "Board" or "Board of Education") is organized and exists under the laws of the State of Colorado, CRS § 123-30-3 (1964); the Board is composed of seven school district directors, elected to such office by electors residing within the boundaries of the School District; said Board is vested

with all powers delegated to a board of education or to a school district by law, and is required to perform all duties required by law; CRS § 123-30-3 (1964).

3. Defendant William C. Berge is President of the said Board of Education; defendant Stephen J. Knight, Jr., is Vice President of said Board of Education; defendants James C. Perrill, Frank K. Southworth, John H. Amesse, James D. Voorhees, Jr., and Rachel B. Noel are school directors and members of said Board of Education.

4. Defendant Robert D. Gilberts is Superintendent of Schools of School District Number One, Denver, Colorado (hereinafter "Superintendent"). He is the executive officer of the Board of Education and is charged with the responsibility of maintaining, managing, and governing the public schools in the School District, in accordance with the rules, regulations, resolutions, policies, directives, customs, practices, and usages established by defendant Board of Education.

III. FIRST CAUSE OF ACTION

General Factual Allegations

A. Defendant Board of Education on or about January 30, 1969, upon recommendation of the Superintendent, passed and enacted Resolution No. 1520, making certain changes in the attendance areas of certain secondary schools in the School District. Said Board of Education stated in said Resolution that such changes were designed to improve educational opportunity in the public schools by revising and thereafter stabilizing the racial and ethnic composition of pupil memberships in such schools. Schools

affected by said Resolution and racial composition of such Schools in September, 1968, were: East High School (53.7% Anglo, 39.6% Negro, 5.8% Hispano); South High School (87.3% Anglo, 0.2% Negro, 12.2% Hispano); George Washington High School (96.0% Anglo, 2.9% Negro, 0.8% Hispano); Hill Junior High School (96.1% Anglo, 1.5% Negro, 1.3% Hispano); Smiley Junior High School (23.6% Anglo, 71.6% Negro, 3.7% Hispano).

B. Plaintiff Kris M. Colley, the son of plaintiff Christine A. Colley, is a resident of an attendance area which was detached from the attendance area of East High School (53.7% Anglo, 39.6% Negro, 5.8% Hispano) and assigned to George Washington High School (96.0% Anglo, 2.9% Negro, 0.8% Hispano) under Resolution No. 1520; if action is taken to implement the recision of said Resolution, he will attend East High School in September, 1969, and the racial composition of both schools will remain substantially as quoted. If Resolution 1520 is implemented the racial composition of these schools will be: East High School 68.0% Anglo, 25.0% Negro, 7.0% Hispano, George Washington High School 87.0% Anglo, 12.0% Negro, 1.0% Hispano.

C. Defendant Board of Education on or about March 20, 1969, upon recommendation of the Superintendent, passed and enacted Resolution No. 1524, making additional changes in the attendance areas of certain secondary schools in the School District in order to further implement the aforesaid Resolution No. 1520. Schools affected by said Resolution and racial composition of such schools in September, 1968, were: Smiley Junior High School (23.6% Anglo, 71.6% Negro, 3.7% Hispano); Merrill Junior High

School (98.2% Anglo, 0.3% Negro, 0.8% Hispano); Grant Junior High School (85.4% Anglo, 4.5% Negro, 9.3% Hispano); Kunsmiller Junior High School (90.3% Anglo, 0.3% Negro, 8.8% Hispano); Hill Junior High School (96.1% Anglo, 1.5% Negro, 1.3% Hispano); Thomas Jefferson Junior-Senior High School (99.2% Anglo, 0.3% Negro, 0.2% Hispano); Hamilton Junior High School (no figures available at this time); Cole Junior High School (3.8% Anglo, 72.5% Negro, 22.2% Hispano); Byers Junior High School (92.5% Anglo, 0.6% Negro, 5.7% Hispano); Bishel Junior High School (75.0% Anglo, 0.3% Negro, 24.4% Hispano); Kepner Junior High School (70.7% Anglo, 1.7% Negro, 27.5% Hispano).

D. Plaintiff Mark A. Williams, the ward of plaintiff Christine A. Colley, is a resident of an attendance area which was detached from the attendance area of Smiley Junior High School (23.6% Anglo, 71.6% Negro, 3.7% Hispano) and assigned to Hill Junior High School (96.1% Anglo, 1.5% Negro, 1.3% Hispano) under Resolution No. 1524; if action is taken to implement the recision of said Resolution, he will attend Smiley Junior High School in September, 1969, and the racial composition of both schools will remain substantially as quoted. If Resolutions No. 1520 and 1524 are implemented the racial composition of these schools will be: Smiley Junior High School 72.0% Anglo, 20.0% Negro, 8.0%Hispano; Hill Junior High School 81.0% Anglo, 17.0% Negro, 2.0% Hispano.

E. Plaintiff Rhonda O. Jennings, the daughter of plaintiff Irma J. Jennings, is a resident of an attendance area which was detached from the attendance area of Cole Junior High School (3.8% Anglo, 72.5% Negro, 22.2% Hispano)

and assigned to Kepner Junior High School (70.7% Anglo, 1.7% Negro, 27.5% Hispano) under Resolution No. 1524; if action is taken to implement the recision of said Resolution, she will attend Cole Junior High School beginning in September, 1969, and the racial composition of both schools will remain substantially as quoted. If Resolution No. 1524 is implemented the racial composition of these schools will be: Kepner Junior High School 69.0% Anglo, 4.0% Negro, 27.0% Hispano, and Cole Junior High School 6.0% Anglo, 64.0% Negro, 30.0% Hispano.

F. Plaintiff Dinah L. Becker, the daughter of plaintiff Maxine N. Becker, is a resident of an attendance area assigned to Merrill Junior High School, (98.2% Anglo, 0.3% Negro, 0.8% Hispano) and will attend said school in September, 1969.

G. Defendant Board of Education on or about April 25, 1969, upon recommendation of the Superintendent, passed and enacted Resolution No. 1531 making changes in the attendance areas of certain elementary schools in the School District. Said Board of Education stated in said Resolution that such changes were designed to stabilize the racial and ethnic composition of pupil memberships in these schools and further the integration of the Denver Public Schools and improve educational opportunity in such schools. Said Resolution No. 1531 also contained provisions for removal of mobile classroom units from Stedman Elementary School, and provided transportation for pupils previously therein to Denison, Force and Schenck Elementary Schools. The schools for which attendance areas were changed and their racial composition as of September, 1968, were: Montclair Elementary School (92.7% Anglo,

25% Negro, 3.2% Hispano); Philips Elementary School (55.3% Anglo, 36.6% Negro, 5.2% Hispano); Ashley Elementary School (85.8% Anglo, 6.4% Negro, 5.8% Hispano); Palmer Elementary School (91.7% Anglo, 4.9% Negro, 1.7% Hispano); Park Hill Elementary School (71.0% Anglo, 23.2% Negro, 3.9% Hispano); Steck Elementary School (86.1% Anglo, 10.7% Negro, 1.0% Hispano); Steele Elementary School (85.0% Anglo, 6.6% Negro, 7.6% Hispano); Whiteman Elementary School (88.1% Anglo, 8.9% Negro, 2.6% Hispano); Moore Elementary School (79.3% Anglo, 8.3% Negro, 8.9% Hispano); Montclair Annex Elementary School (98.1% Anglo, 1.9% Negro, 0.0% Hispano); Barrett Elementary School (0.3% Anglo, 96.9% Negro, 1.9% Hispano); Carson Elementary School (90.3% Anglo, 6.7% Negro, 0.8% Hispano); Asbury Elementary School (88.9% Anglo, 5.7% Negro, 3.9% Hispano).

H. Plaintiffs Christi Keyes and Mark Keyes, the children of plaintiff Wilfred Keyes, are residents of an unchanged attendance area assigned to the Hallett Elementary School (10.1% Anglo, 84.4% Negro, 3.7% Hispano) and will attend said school in September, 1969.

I. Plaintiff Gregory L. Wade, the son of Roberta R. Wade, is a resident of an attendance area detached from Barrett Elementary School (0.3% Anglo, 96.9% Negro, 1.9% Hispano) and assigned to Carson Elementary School (90.3% Anglo, 6.7% Negro, 0.8% Hispano) under Resolution No. 1531; if action is taken to implement the recision of said Resolution, he will attend Barrett Elementary School in September, 1969, and the racial composition of both schools will remain substantially as quoted. If Resolution No. 1531 is implemented the racial composition of these

schools will be: Barrett Elementary School, 73.0% Anglo, 24.0% Negro, 3.0% Hispano, Carson Elementary School, 78.0% Anglo, 20.0% Negro, 2.0% Hispano.

J. Plaintiff Denise Michelle Starks, the daughter of Edward J. Starks, Jr., is a resident of an attendance area of Philips Elementary School (55.3% Anglo, 36.6% Negro, 5.2% Hispano) which was altered to become a part of the attendance area for Palmer Elementary School (91.7% Anglo, 4.9% Negro, 1.7% Hispano) under Resolution No. 1531; if action is taken to implement the recision of said Resolution, she will attend Philips Elementary School in September, 1969, and the racial composition of both schools will remain substantially as quoted. If Resolution No. 1531 is implemented the racial composition of these schools will be: Philips Elementary School, 70.0% Anglo, 22.0% Negro, 8.0% Hispano, Palmer Elementary School 81.0% Anglo, 15.0% Negro, 4.0% Hispano.

K. To implement the aforesaid Resolutions No. 1520, 1524, and 1531 defendant Board of Education has required defendant Superintendent to initiate a purchase of twenty-seven (27) school buses. In addition the defendant Superintendent substantially completed steps designed to implement such Resolutions in September, 1969, including initiation of in-service training for over eight hundred (800) faculty and staff, preparation of class schedules, schedules of course availability, pupil assignments, space assignments, transportation utilization and other actions.

L. On May 20, 1969, pursuant to regular statutory requirements two new members were elected to seats on the defendant Board of Education, these being defendants

James C. Perrill and Frank K. Southworth. Defeated in the same election were two incumbent members of the Board of Education who had voted for passage of the aforesaid Resolutions No. 1520, 1524 and 1531. The victorious candidates, defendants Perrill and Southworth, had campaigned on slogans such as "Against Forced Busing!" "For Neighborhood Schools!" and promised, if elected, to vote for recision of the aforesaid Resolutions No. 1520, 1524 and 1531. Said slogans and promises intensified racial polarization within the School District.

M. Having seated its two newly elected members, defendant Board of Education on June 9, 1969, passed by a vote of 4-3, three motions rescinding each of the three Resolutions No. 1520, 1524 and 1531.

N. If defendants are permitted to implement the motions to rescind Resolutions No. 1520, 1524 and 1531, as by implementing substitute resolutions now or hereafter passed by the Board, such implementation will or may entail modification or cancellation of said presently-existing purchase order for twenty-seven school buses; modification or recision and destruction of all work already accomplished with regard to prior implementation of the now-rescinded Resolutions No. 1520, 1524 and 1531; *e.g.*, class assignments, pupil assignments, space assignments, schedules for utilization of transportation facilities, which if destroyed will irreparably injure the minor plaintiffs and others similarly situated, as follows: In the event that this Court should ultimately decide to grant to plaintiffs the permanent relief prayed for herein, such relief will not be possible for the school year beginning September, 1969, unless during the pendency of this action the *status*

quo is maintained; *i.e.*, unless the contracts, schedules and assignments already prepared to implement the now-rescinded Resolutions are retained. If the *status quo* is not maintained, the minor plaintiffs and their classes will be segregated and forced to receive an unequal educational opportunity during the school year beginning September, 1969, as is more fully detailed herein in paragraphs A through M.

O. If Resolutions No. 1520, 1524 and 1531 are not reinstated and implemented, and if the motions for recision and any substitute resolutions or motions are not declared unconstitutional and void as depriving said minor plaintiffs and those similarly situated of equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States, said plaintiffs and those similarly situated will be irreparably harmed and injured because they will be segregated on the basis of race and ethnicity, and forced to attend schools which will be segregated, and which would not be segregated if Resolutions No. 1520, 1524 and 1531 were reinstated and implemented, resulting in their being forced to receive an unequal educational opportunity during the school year beginning September, 1969, and for subsequent years thereafter, as is more fully stated in paragraphs A through P herein.

P. Plaintiffs have no plain, speedy, adequate or complete remedy to redress the wrongs and illegal acts complained of herein, other than this suit for injunctive relief. Any other remedy to which plaintiffs and those similarly situated could be entitled would be atttended by such uncertainties and delays as to deny substantial relief,

would involve a multiplicity of suits, cause further irreparable injury, and occasion damage, vexation and inconvenience, not only to plaintiffs, and those similarly situated, but to defendants as well.

FIRST COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in the General Factual Allegations of this First Cause of Action.

B. The recision of Resolutions No. 1520, 1524 and 1531 will have the effect of encouraging private acts of racial discrimination and is therefore a derogation of the minor plaintiffs' rights to equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States.

SECOND COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in the General Factual Allegations of this First Cause of Action.

B. In rescinding Resolutions No. 1520, 1524 and 1531 defendant Board members were motivated by racial and ethnic considerations.

C. Negro and Hispano plaintiffs, and the classes which they represent, view the actions of said defendants in rescinding these Resolutions as a significant defeat of their attempt to obtain equal educational opportunity and the equal protection of the laws for all Negro and Hispano students in the School District.

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THIRD COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in the General Factual Allegations of this First Cause of Action.

B. Prior to the passage of Resolutions No. 1520, 1524 and 1531, the pupil population of the schools affected thereby were substantially segregated on the basis of race or ethnicity.

C. If Resolutions No. 1520, 1524 and 1531 had been implemented the effect would have been to substantially relieve the actual segregation of the pupil populations of the schools affected thereby.

D. In rescinding these resolutions the defendant Board members voting in favor of recision, and, therefore, the defendant Board itself, were motivated by a desire to maintain, require, and facilitate the racial and ethnic separation which existed in the schools affected prior to the passage of Resolutions No. 1520, 1524 and 1531, and which would have been significantly alleviated by the Resolutions rescinded.

FOURTH COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in the General Factual Allegations of this First Cause of Action.

B. By the recision of Resolutions No. 1520, 1524 and 1531 defendants Board and Board members knowingly

reassigned children whom it had previously designated to receive an integrated education to schools which will as a result of the Board's action be substantially segregated, and thus resegregated such children on the basis of race and ethnic origin.

FIFTH COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in the General Factual Allegations of this First Cause of Action.

B. Prior to the passage of Resolutions No. 1520, 1524 and 1531, the pupil populations of the schools affected were substantially segregated on the basis of race and ethnicity, and those schools with predominantly Negro or Hispano populations were providing unequal educational opportunity due to the fact that such schools were (on the average for all Denver schools) assigned less-experienced faculty, had higher drop-out rates, were assigned and allocated a disproportionately large number of Negro or Hispano faculty, had a disproportionately large number of mobile units, and had pupil memberships derived from generally lower economic status.

C. Implementation of the aforesaid Resolutions No. 1520, 1524 and 1531 would have resulted in substantial alleviation of the racial and ethnic segregation in such schools.

D. The benefits which would have accrued from integration under Resolutions No. 1520, 1524 and 1531 would have

significantly eliminated the existing inequalities in educational opportunity as set forth in paragraph B above, and the recision of those resolutions therefore operates to deny minor plaintiffs an educational opportunity equal to that accorded students in schools the pupil population of which are not predominantly Negro or Hispano.

SIXTH COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in the General Factual Allegations of this First Cause of Action.

B. Prior to the passage of Resolutions No. 1520, 1524 and 1531 the pupil populations of the schools affected thereby were substantially segregated on the basis of race or ethnicity.

C. If Resolutions No. 1520, 1524 and 1531 had been implemented the effect would have been to substantially relieve the actual segregation of the pupil populations of the schools thereby affected.

D. By reinstating the racial and ethnic separation existing in the affected schools prior to the passage of Resolutions 1520, 1524 and 1531, and by assigning plaintiffs and the class they represent to those segregated schools to which they would have gone had Resolutions No. 1520, 1524 and 1531 never been passed, defendants have acted to deny plaintiffs an equal educational opportunity by implementing and effectuating a policy the effect of which is to confine plaintiffs to schools which because of the

recision will be actually segregated on the basis of race or ethnicity.

PRAYER FOR FIRST CAUSE OF ACTION

A. Wherefore, plaintiffs, in behalf of themselves and those similarly situated, pray as follows:

1. That defendants, and each and every of defendant School District's officers, agents, servants, employees and each of them, and all other persons in active concert or participation with them be, preliminarily during the pendency of this action and permanently thereafter, restrained and enjoined

   (a) from in any way interfering with, modifying, cancelling or rescinding the purchase order for said twenty-seven school buses;

   (b) from destroying, changing or otherwise modifying, in any manner whatsoever, or relocating all those documents, contracts, schedules, or other writings and memoranda relating or pertaining to the implementation of Resolutions No. 1520, 1524 and 1531.

   (c) from taking any action or making any communication to faculty, staff, parents or students during the pendency of this action or before permanent orders are issued by this Court which would make it impossible or substantially more difficult, to proceed with the implementation of Resolutions No. 1520, 1524

and 1531 at the start of the school year in September, 1969, with the exception that defendants shall not otherwise during such time be prevented from simultaneously preparing for the implementation of alternate or additional plans concerning the matters described herein as they so desire.

2. That those motions passed by defendant Board rescinding Resolutions No. 1520, 1524 and 1531, and resolutions, policies, directives, plans and actions passed, enacted or implemented by defendants or any of them attempting to further the purposes of said rescinding motions or to prevent the full and complete implementation of Resolutions No. 1520, 1524 and 1531 be declared null and void and of no force and effect whatsoever as a denial of equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States.

3. That defendants be required to implement fully and completely the provisions, plans and actions outlined in Resolutions No. 1520, 1524 and 1531 beginning in September, 1969, and further that defendants be forever enjoined from acting to nullify, modify, delay, or deny to plaintiffs or others similarly situated the equal educational opportunity guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

4. That the Court, pursuant to 28 U.S.C. § 2201, adjudge and decree that:

(a) The actions of defendant Board in rescinding Resolutions No. 1520, 1524 and 1531, have denied to the minor plaintiffs who are Negro or Hispano and other persons similarly situated, educational opportunities, advantages and facilities equal to those afforded and available to Anglo children in schools unaffected by such recision, and that said actions are unconstitutional and void, as depriving said plaintiffs of equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States;

(b) The actions of defendant Board in rescinding Resolutions No. 1520, 1524 and 1531, have denied to the minor plaintiffs who are Anglo, and other persons similarly situated, the advantages, educational benefits, intellectual stimulation and practical preparation for a multiracial world afforded and available to those Anglo children attending racially balanced and integrated schools within the school District, and that such actions are unconstitutional and void, as depriving said plaintiffs of equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

B. That plaintiffs recover their costs, and for such other and further relief as may to the Court appear proper.

IV. SECOND CAUSE OF ACTION

First Count

A. Plaintiffs incorporate herein by reference each and every allegation of the First Cause of Action herein.

B. By the following described acts, among others, defendants and/or their predecessors have over the years and are at present deliberately and purposefully attempting to create, foster and maintain racial and ethnic segregation within the School District:

(1) With full knowledge of the existence of racially and ethnically segregated residential patterns, and with full knowledge that the superimposition thereupon of a so-called "neighborhood school" policy would result in significant racial and ethnic segregation in the School District reflective of said segregated residential patterns, said defendants adopted and continue to maintain such a neighborhood school policy with the intent, purpose and effect of creating, fostering and maintaining racially and ethnically segregated schools.

(2) Over a period of years and on repeated occasions said defendants have created, altered and enforced certain school attendance area boundaries with the purpose, intent and effect of creating, fostering and maintaining racial and ethnic segregation within the School District.

(3) With the purpose, intent and effect of creating, fostering and maintaining racial and ethnic segre-

gation of the Denver public schools, said defendants during certain years have allowed certain Anglo children optional transfer outside of established school attendance areas, in contravention of said defendants' existing published policies and resolutions, with no apparent purpose other than that of encouraging, promoting and continuing the segregation of the Anglo students from Negro and/or Hispano students.

(4) With the purpose, intent and effect of creating, fostering and maintaining racial and ethnic segregation in the School District, said defendants have assigned Negro and Hispano faculty and staff to those schools having predominantly Negro and Hispano pupil populations, thereby furthering, confirming and solidifying the racially and ethnically segregated character of those schools.

(5) As certain schools within the School District have undergone transition to gradually increasing proportions of Negro and/or Hispano pupil populations, said defendants have created optional attendance areas which were consciously and intentionally designed to promote and allow transfer of Anglo pupils to predominantly Anglo schools and thereby to retain and confine Negro and/or Hispano pupils to schools of predominantly Negro and/or Hispano pupil populations.

C. These various actions of said defendants have effected in the School District a significant segregation of pupils by race and ethnicity, as evidenced by the following facts:

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(1) In September, 1968, of the 63,385 Anglo students in the public schools in the School District, 37,539, or 59%, were in 43 schools the pupil population of which were over 85% Anglo.

(2) In September, 1968, of the 13,639 Negro students in the public schools in the School District, 8,451, or 62%, were in 15 schools the pupil populations of which were over 85% Negro and/or Hispano.

(3) In September, 1968, of the 18,611 Hispano students in the public schools in the School District, 9,360 Hispanos, or 50.2%, were in 35 schools the pupil populations of which were over 50% Negro and/or Hispano.

SECOND COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in their First Cause of Action and subparagraphs C(1), C(2), and C(3) of the First Count of this Second Cause of Action in so far as those subparagraphs allege the existence in the School District of actual segregation on the basis of race and ethnicity.

B. By the following described acts, among others, defendants or their predecessors have allocated to those schools in the School District whose populations are predominantly Negro and/or Hispano resources substantially inferior to those allocated to schools with predominantly Anglo pupil populations:

(1) Defendants and/or their predecessors have provided predominantly Negro and Hispano schools

with physical plants, equipment, materials, supplies and curricula inferior to that provided to schools with predominantly Anglo student pupil populations.

(2) Defendants and/or their predecessors have allocated and assigned a disproportionately large number of less-experienced faculty to those schools in the School District with predominantly Negro or Hispano pupil populations, while at the same time allocating and assigning a disproportionately large number of more-experienced faculty to schools with predominantly Anglo pupil populations.

C. By providing those schools having predominantly Negro and Hispano student populations with resources inferior to those allocated to predominantly Anglo schools, defendants and/or their predecessors have in the past and are at present denying students attending those schools, including plaintiff Sarah S. Weiner and those similarly situated the equal protection of the laws by providing them with an educational opportunity unequal to that provided by other schools in the School District.

THIRD COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in their First Cause of Action, except in so far as they may be construed to allege an *intent* on the part of defendants and/or their predecessors to segregate the School District's pupil population on the basis of race and ethnicity.

B. Plaintiffs hereby incorporate by reference each and every allegation contained in subparagraphs C(1), C(2) and C(3) of the First Count of this Second Cause of Action, in so far as those subparagraphs allege the existence in the School District of actual segregation on the basis of race and ethnicity.

C. Defendants and/or their predecessors have adopted and continue to maintain a "neighborhood school" policy which effects the assignment of students to schools according to a geographic limitation, and results in the racial and ethnic segregation of students as is shown by the facts incorporated in paragraph B above.

D. By the creation and maintenance of a school system segregated on the basis of race and ethnicity, defendants and/or their predecessors have and will continue to deny an equal educational opportunity to those students assigned to schools which are predominantly Negro and/or Hispano, and to deny equal protection of the laws to such students and to plaintiffs and other members of the classes which they represent.

FOURTH COUNT

A. Plaintiffs incorporate herein by reference each and every allegation of their First Cause of Action.

B. Defendants and/or their predecessors originated and defendants continue to administer throughout the School District various systems of pupil ability grouping referred to hereinafter as the "track systems".

C. Under these systems students are purportedly classified according to ability to learn and then assigned either to a regular or accelerated educational program and curriculum.

D. The effect of the application and administration of these track systems has been the segregation and separation of students on the basis of race and ethnicity and the denial to the minor Negro and Hispano plaintiffs, and those similarly situated, an educational opportunity equal to that offered Anglo students of comparable ability and qualifications.

PRAYER FOR SECOND CAUSE OF ACTION

A. Wherefore, plaintiffs, in behalf of themselves and in behalf of those persons similarly situated, pray as follows:

1. Under the First Count of this Second Cause of Action,

(a) That defendants, and each of them, be permanently enjoined and restrained from directly or indirectly continuing, maintainig, requiring, promoting or encouraging, through their rules, regulations, resolutions, policies, directives, customs, practices and usages, the segregation and separation by race and ethnicity of the pupils of the schools within the School District.

(b) That defendants be required to submit to this Court, within a time which is both reasonable and certain, and which would allow sufficient

time for implementation of such program for the beginning of the school year commencing on or about September 1, 1970, a comprehensive plan for the School District as a whole, and for each school therein where such condition exists, which will effectively:

(i) Remove the segregation and separation of school children by race and ethnicity within and among such schools;

(ii) Afford and ensure to every school child, regardless of race or ethnicity, and regardless of the school which such child attends, an equal educational opportunity;

(c) That defendants, and each of them, be permanently enjoined and restrained:

(i) From any further creation, alteration or enforcement of any boundaries for any school attendance area that is intended to or does in fact discriminate on the basis of race or ethnicity as between school children within the District.

(ii) From any further creation or enforcement of optional areas or zones or permissive policies which are intended to or do in fact discriminate on the basis of race or ethnicity as between school children within the District as to the right of optional transfer outside of established school attendance areas;

(iii) From any further utilization or adoption of policies regarding the assignment of faculty

or staff which are intended to or do in fact assign faculty and staff to schools on the basis of race or ethnicity, thereby furthering and solidifying the racial and ethnic character of such schools.

(d) That the Court, pursuant to 28 U.S.C. § 2201, adjudge and decree that the actions of defendants in purposefully and knowingly creating and maintaining the segregation and separation by race and ethnicity of the school children within the District are unconstitutional and void, as depriving plaintiffs, and those similarly situated, of equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

2. Under the Second Count of this Second Cause of Action,

(a) That defendants and each of them be permanently enjoined and restrained from directly or indirectly continuing, maintaining, requiring, promoting or encouraging through their rules, regulations, resolutions, policies, directives, customs, practices and usages the unequal allocation of resources which is intended to or does in fact discriminate on the basis of race and ethnicity as between school children within the District.

(b) That defendants be required to submit to this Court, within a time which is both reasonable and certain, and which would allow sufficient time

for implementation of such plan by the beginning of the school year commencing in September, 1970, a comprehensive plan for the School District as a whole, and for each school therein where such conditions exist, which will effectively:

(i) Remove any existing disparity in the resources allocated to such schools; and

(ii) Afford and ensure to every school child, regardless of race or ethnicity, and regardless of the school which such child attends, an equal opportunity to attend schools which from the standpoint of facilities, faculty and staff, are in fact equal or as nearly so as is practical and feasible under the circumstances.

(c) That defendants and each of them be permanently enjoined and restrained:

(i) From adopting or continuing any policy which is intended to or in fact does result in an unequal allocation of such resources as physical plant equipment, materials, supplies and curricula among and between schools on the basis of race or ethnicity, or which discriminates on the basis of race or ethnicity as between school children within the District.

(ii) From any further policy regarding the assignment of faculty or staff which is intended to or does in fact assign less-experienced or

less-qualified faculty or staff to schools which are predominately Negro and/or Hispano in their racial and ethnic composition.

(d) That the Court, pursuant to 28 U.S.C. § 2201, adjudge and decree that the actions of the defendants in allocating resources among and between schools within the District with the effect of allocating inferior resources to those schools which are predominately Negro and/or Hispano in their racial or ethnic composition, are unconstitutional and void as depriving plaintiffs and those persons similarly situated of equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States.

3. Under the Third Count of this Second Cause of Action,

(a) That defendants, and each of them, be permanently enjoined and restrained from directly or indirectly continuing, maintaining, requiring, promoting or encouraging, through their rules, regulations, resolutions, policies, directives, customs, practices and usages, the segregation and separation by race and ethnicity of the pupils of the schools within the School District.

(b) That defendants be required to submit to this Court, within a time which is both reasonable and certain, and which would allow sufficient time for implementation of such program for the begin-

ning of the school year commencing on or about September 1, 1970, a comprehensive plan for the School District as a whole, and for each school therein where such condition exists, which will effectively:

(i) Remove the segregation and separation of school children by race and ethnicity within and among such schools;

(ii) Afford and ensure to every school child, regardless of race or ethnicity, and regardless of the school which such child attends, an equal educational opportunity;

(c) That defendants, and each of them, be permanently enjoined and restrained from any further creation, alteration or enforcement of any boundaries for any school attendance area that is intended to or does in fact discriminate on the basis of race or ethnicity as between school children within the District.

(d) That the Court, pursuant to 28 U.S.C. § 2201, adjudge and decree that the actions of defendants which resulted in the actual segregation and separation by race and ethnicity of the school children within the District are unconstitutional and void, as depriving said plaintiffs, and those similarly situated, of equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

4. In the alternative, under the Third Count of this Second Cause of Action, that defendants be required to

submit to this Court, within a time which is both reasonable and certain, and which would allow sufficient time for implementation by the beginning of the school year commencing in September, 1970, a comprehensive plan for the School District as a whole, and for each school therein where such condition exists, which will effectively:

(a) Mitigate, to the greatest extent possible and feasible under the circumstances, the segregation and separation of school children by race and ethnicity within and among said schools;

(b) Minimize, to the greatest extent possible and feasible under the circumstances, the adverse effects upon equal educational opportunity caused by the segregation which remains.

5. Under the Fourth Count of this Second Cause of Action,

(a) That defendants, and each of them, be permanently enjoined and restrained from directly or indirectly continuing, maintaining or applying the existing track system or any other ability grouping, test or device which is either intended to or does in fact discriminate between pupils on the basis of race or ethnicity or which is either intended to or does in fact accord Negro and Hispano students an educational opportunity unequal to that accorded Anglo students of comparable abilities and qualifications.

(b) That the Court, pursuant to 28 U.S.C. § 2201 adjudge and decree that the actions of defendants in creating, applying and administering the exist-

ing "track systems" which both in fact discriminates against Negro and Hispano students and denies said students an educational opportunity equal to that accorded Anglo students of comparable abilities and qualifications are unconstitutional and void, as depriving plaintiffs, and those similarly situated, of equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

B. That plaintiffs recover their costs and for such other and further relief as may to the Court appear proper.

BARNES & JENSEN

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Complaint for Permanent Injunction and Declaratory Judgment

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Complaint for Permanent Injunction and Declaratory Judgment

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STATE OF COLORADO,
CITY AND COUNTY OF DENVER, *ss.*

EUGENE R. WEINER, being duly sworn, deposes and says that he is one of the plaintiffs in the within action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those, he believes them to be true.

/s/ EUGENE R. WEINER

Subscribed and sworn to before me this 19th day of June, 1969.

Witness my hand and official seal.

/s/ MARGARET P. APPERSON
Notary Public
My commission expires:
May 22, 1972

(SEAL)

Plaintiffs' Exhibit 3

Exhibit Annexed to Complaint

(Resolution 1520)

Approved by the Board of Education on January 30, 1969

WHEREAS, pursuant to the Resolution of this Board of Education passed on May 16, 1968, and numbered 1490, in response to the subsequent specific direction of this Board of Education, and in accordance with Article VIII, Section 2 of the By Laws of this Board, the Superintendent of this School District has proposed certain changes in the boundaries of the attendance areas of certain secondary schools of this School District, which changes are one of the steps designed to improve educational opportunity in the public schools of this District by revising and thereafter stabilizing the racial and ethnic composition of pupil memberships in such schools;

WHEREAS, this Board of Education did receive said proposals of the Superintendent for study and action and did order that the citizens of this School District be given an opportunity to express their views on said proposals at a public hearing; and

WHEREAS, this Board of Education, having heard the views of the citizens of this School District on the proposed changes in attendance areas and boundaries; having considered traffic patterns, distances, housing patterns, school building capacities, optimum pupil memberships for the schools concerned, pupil achievement data, the need for providing transportation to pupils and the cost thereof,

and current policies of the Board of Education regarding the provision of transportation for pupils; and having otherwise informed itself on the questions presented by the said proposals, FINDS that, because of the housing patterns in the City and County of Denver, East High School and Smiley Junior High School contain growing numbers of pupils of racial and ethnic minorities; that a reduction of such numbers is desirable as one of the steps to improve educational opportunity in such schools; and that the changes in the attendance areas as proposed by the superintendent are consistent with the foregoing and as hereinafter set forth herein, will reasonably accomplish such reduction and thereafter stabilize the racial and ethnic composition of pupil memberships in these schools; and that such changes are in the public interest.

NOW THEREFORE, IT IS RESOLVED by the Board of Education of School District No. 1 in the City and County of Denver and State of Colorado that, effective as of the opening of school in September of 1969, the boundaries of the attendance areas of the following secondary schools in this School District be, and they are hereby, changed as follows:

1. The following described area shall be detached from the EAST HIGH SCHOOL attendance area and shall become a part of the SOUTH HIGH SCHOOL attendance area.

   Beginning at the intersection of the Union Pacific Railroad tracks and Clayton Street, thence: Easterly along the railroad tracks to Colorado Boulevard, South on Colorado Boulevard to East 32nd Avenue,

West on East 32nd Avenue to Fillmore Street, North of Fillmore Street to East 40th Avenue, West on East 40th Avenue to Clayton Street, and North on Clayton Street to the point of beginning.

2. The following described area shall be detached from the South High School attendance area and shall become a part of the East High School attendance area.

   Beginning at the intersection of Logan Street and the centerline of Cherry Creek, thence: Southeasterly along the centerline of Cherry Creek to Alameda Avenue, West along Alameda Avenue to South Logan Street, and North on Logan Street to the point of beginning.

3. The following described area shall be detached from the George Washington High School attendance area and shall become a part of the South High School attendance area.

   Beginning at the intersection of South Colorado Boulevard and East Arizona Avenue, thence: East on Arizona Avenue to South Dahlia Street, South on South Dahlia Street to the City Limits, Northwest along the City Limits to the Colorado and Southern Railroad tracks, Westerly along the Colorado and Southern Railroad tracks to South Colorado Boulevard, and North on South Colorado Boulevard to the point of beginning.

4. The following described area shall be detached from the East High School attendance area and shall

become a part of the George Washington High School attendance area.

Beginning at the intersection of Ivanhoe Street extended and Interstate Highway 70, thence: Easterly on Interstate Highway 70 to Syracuse Street extended, South on Syracuse Street extended and Syracuse Street to East 32nd Avenue, West on East 32nd Avenue to Monaco Boulevard, South on Monaco Boulevard to Montview Boulevard, West on Montview Boulevard to Jasmine Street, South on Jasmine Street to East Colfax Avenue, West on East Colfax Avenue to Ivanhoe Street, and North on Ivanhoe Street to the point of beginning.

5. The following described area shall be detached from the George Washington High School attendance area and shall become a part of the East High School attendance area.

Beginning at the intersection of East Colfax Avenue and Ivanhoe Street, thence: East on East Colfax Avenue to Jasmine Street, South on Jasmine Street to East 6th Avenue, West on East 6th Avenue to Colorado Boulevard, South on Colorado Boulevard to East Alameda Avenue, West on East Alameda Avenue to the centerline of Cherry Creek, Northwesterly along the centerline of Cherry Creek to Steele Street, North on Steele Street to East 7th Avenue, East on East 7th Avenue to Colorado Boulevard, North on Colorado Boulevard to East 8th Avenue, East on East 8th Avenue to Grape Street, North on Grape Street to East 14th Avenue, East on East 14th Avenue to Holly Street, North

on Holly Street to East Colfax Avenue, and East on East Colfax Avenue to the point of beginning.

6. The following described area shall be detached from the HILL JUNIOR HIGH SCHOOL attendance area and shall become a part of the SMILEY JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of East Colfax Avenue and Kearney Street, thence: East on East Colfax Avenue to Yosemite Street, South on Yosemite Street and Yosemite Street extended to East 1st Avenue extended, West on East 1st Avenue extended and East 1st Avenue to the west boundary the United States Air Force Reservation, North on the west boundary of the United States Air Force Reservation to the north boundary of the United States Air Force Reservation, East on the north boundary of the United States Air Force Reservation to Quebec Street, North on Quebec Street to East 6th Avenue, West on East 6th Avenue to Kearney Street, and North on Kearney Street to the point of beginning.

7. The area known as Montbello which was annexed to the City and County of Denver by Ordinance No. 262, Series of 1965, of the Ordinances of the City and County of Denver and State of Colorado, shall remain in the EAST HIGH SCHOOL subdistrict and in the SMILEY JUNIOR HIGH SCHOOL subdistrict.

Unless otherwise specified, references to city streets and avenues as boundaries shall be taken as referring to the centerlines of such streets and avenues.

Exhibit Annexed to Complaint

IT IS FURTHER RESOLVED that, consistent with the foregoing, the Superintendent is hereby directed to make the following recommendations by March 10, 1969, for consideration and action by this Board at its regular March meeting:

1. To recommend further changes in the boundaries of the Smiley Junior High School attendance area which will detach therefrom attendance areas sufficient in size to include approximately 850 pupils who would otherwise attend Smiley Junior High School and designate such detached areas as attendance areas for other junior high schools within this School District, all effective with the beginning of school in September, 1969.

2. To recommend whether or not each area so detached from the Smiley Junior High School attendance area shall continue as part of its present senior high school attendance area or be designated as part of the attendance area for another senior high school within this School District.

3. To make such other recommendations as he shall deem necessary or desirable in order to carry out the intent of this resolution.

IT IS FURTHER RESOLVED that the present policies of this School District regarding provision of transportation for secondary school pupils to and from school remain in full force and effect, except, that from and after September, 1969, those senior high school pupils residing in the area bounded by Clayton Street, the Union Pacific Railroad tracks, Colorado Boulevard and East 32nd Avenue and herein assigned to South High School effective September,

1969, shall be provided with transportation to and from South High School without charge to them.

IT IS FURTHER RESOLVED that those pupils entering their senior year of high school in September of 1969, and who reside in the senior high school attendance areas changed by this resolution shall have the option of attending the senior high school of the attendance area in which they continue to reside or the senior high school which they attended at the close of the 1968-1969 school year, which option shall be exercised in accordance with procedures prescribed by the Superintendent of this School District.

Plaintiffs' Exhibit 4

Exhibit Annexed to Complaint

(Resolution No. 1524)

Approved by the Board of
Education March 20, 1969

WHEREAS, this Board of Education by its Resolution Numbered 1520 and passed on January 30, 1969, directed the Superintendent of this School District to make certain recommendations for consideration and action by this Board;

WHEREAS, in accordance with said Resolution 1520 and Article VIII, Section 2, of the By Laws of this Board, the Superintendent has recommended changes in the boundaries of the attendance areas of Certain of the secondary schools of this School District; and

WHEREAS, this Board of Education has considered the recommendations of the Superintendent, finds them in accord with the purposes and intent of said Resolution No. 1520, and finds that such changes are in the public interest;

NOW THEREFORE, IT IS RESOLVED by the Board of Education of School District No. 1 in the City and County of Denver and State of Colorado that the boundaries of the attendance areas of the following junior high schools in this School District be, and they are hereby, changed as hereinafter specifically provided; that on and after the opening of school in September of 1969 all 7th, 8th and 9th grade pupils from time to time residing in such changed attendance areas are hereby assigned to the junior high school of such changed attendance areas as follows:

1. The following described area shall be detached from SMILEY JUNIOR HIGH SCHOOL attendance area and as hereinabove provided shall become a part of MERRILL JUNIOR HIGH SCHOOL attendance area.

Exhibit Annexed to Complaint

Beginning at the intersection of the Union Pacific Railroad tracks and Clayton Street, thence: Easterly along the Railroad tracks to Dahlia Street, South on Dahlia Street to East 35th Avenue, West on East 35th Avenue to Cherry Street; South on Cherry Street to East 30th Avenue, West on East 30th Avenue to Colorado Boulevard, North on Colorado Boulevard to East 32nd Avenue, West on East 32nd Avenue to Fillmore Street, North on Fillmore Street to East 40th Avenue, West on East 40th Avenue to Clayton Street, and North on Clayton Street to the point of beginning.

2. The following described area shall be detached from SMILEY JUNIOR HIGH SCHOOL attendance area and as hereinabove provided shall become a part of GRANT JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of the Union Pacific Railroad tracks and Dahlia Street, thence: Easterly along the Railroad tracks to Forest Street, South on Forest Street to Thrill Place, West on Thrill Place to Dahlia Street, and North on Dahlia Street to the point of beginning.

3. The following described area shall be detached from SMILEY JUNIOR HIGH SCHOOL attendance area and as hereinabove provided shall become a part of BYRNE JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of East 35th Avenue and Cherry Street, thence: East on East 35th Avenue to Dahlia Street, South on Dahlia Street to Thrill Place, East on Thrill Place to Forest Street, South on Forest Street to East 28th Avenue, West on 28th Avenue to Dexter Street, North on Dexter Street to East 30th

Avenue, West on East 30th Avenue to Cherry Street, and North on Cherry Street to the point of beginning.

4. The following described area shall be detached from Shiley Junior High School attendance area and as hereinabove provided shall become a part of Kunsmiller Junior High School attendance area.

Beginning at the intersection of the Union Pacific Railroad tracks and Forest Street, thence: Southeasterly along the railroad tracks to Ivanhoe Street extended, South on Ivanhoe Street extended and Ivanhoe Street to East 29th Avenue, West on East 29th Avenue to Forest Street, and North on Forest Street to the point of beginning.

5. The following described area shall be detached from Shiley Junior High School attendance area and as hereinabove provided shall become a part of Hill Junior High School attendance area.

Beginning at the intersection of Interstate Highway 70 and Ivanhoe Street extended, thence: East along Interstate Highway 70 to Locust Street extended, South on Locust Street extended and Locust Street to East 29th Avenue, West on East 29th Avenue to Ivanhoe Street, and North on Ivanhoe Street and Ivanhoe Street extended to the point of beginning.

6. The following described area shall be detached from Shiley Junior High School attendance area and as hereinabove provided shall become a part of Hamilton Junior High School for 7th and 8th grade pupils and Thomas Jefferson Junior-Senior High School for 9th grade pupils residing therein from time to time.

Exhibit Annexed to Complaint

Beginning at the intersection of Interstate Highway 70 and Locust Street extended, thence: Easterly along Interstate Highway 70 to Syracuse Street extended, South along Syracuse Street extended and Syracuse Street to East 26th Avenue, West along East 26th Avenue to Locust Street, and North on Locust Street and Locust Street extended to the point of beginning.

7. The following described area shall be detached from COLE JUNIOR HIGH SCHOOL attendance area and shall become a part of SMILEY JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of East 54th Avenue and the Burlington Railroad tracks, thence: East on East 54th Avenue to Colorado Boulevard, South on Colorado Boulevard to Vasquez Boulevard, Southwest on Vasquez Boulevard to East 46th Avenue, West on East 46th Avenue to the Burlington Railroad tracks, and Northeast along the Burlington Railroad tracks to the point of beginning.

8. The following described area shall be detached from HILL JUNIOR HIGH SCHOOL attendance area and shall become a part of the attendance areas of HAMILTON JUNIOR HIGH SCHOOL and THOMAS JEFFERSON JUNIOR-SENIOR HIGH SCHOOL effective as of the opening of school in September of 1969, and thereafter all 7th and 8th grade pupils from time to time residing therein shall attend HAMILTON JUNIOR HIGH SCHOOL: all 9th grade pupils from time to time residing therein shall attend THOMAS JEFFERSON JUNIOR-SENIOR HIGH SCHOOL.

Beginning at the intersection of East Kentucky Avenue and the centerline of Cherry Creek, thence: Easterly along East Kentucky Avenue and East Kentucky Ave-

nue extended to the east side of South Dayton Street, North on South Dayton Street to East Alameda Avenue, Northeasterly on East Alameda Avenue to South Havana Street, South on South Havana Street to the Highline Canal, Southeasterly along the Highline Canal to South Fulton Street, South along South Fulton Street to the boundary line of the City and County of Denver as it now exists, East along said boundary line to South Geneva Street, North along South Geneva Street to the said boundary line of the City and County of Denver, East along said boundary line to South Havana Street, South on South Havana Street to East Mississippi Avenue, West on East Mississippi Avenue (not including the Cunningham School Site) to the Parker Road, Westerly along the said boundary line of the City and County of Denver to South Quebec Street, South on South Quebec Street to South Quebec Way, Southeasterly on South Quebec Way to East Louisiana Avenue, West on East Louisiana Avenue to South Quebec Street, South on South Quebec Street to East Florida Avenue, West on East Florida Avenue to the centerline of Cherry Creek, and Northwest along the centerline of Cherry Creek to the point of beginning.

9. The following described area shall be detached from Mitchell Junior High School attendance area and shall become a part of the attendance areas of Hamilton Junior High School and Thomas Jefferson Junior-Senior High School effective as of the opening of school in September 1969, and thereafter all 7th and 8th grade pupils residing therein shall attend Hamilton Junior High School; all 9th grade pupils residing therein shall attend Thomas Jefferson Junior-Senior High School.

Exhibit Annexed to Complaint

Beginning at the intersection of East Florida Avenue and South Monaco Boulevard, thence: East along East Florida Avenue to South Quebec Street, South on South Quebec Street along the City Limits to East Yale Avenue, West on East Yale Avenue to South Kearney Street, North on South Kearney Street to the centerline of the Highline Canal, Northwesterly along the centerline of the Highline Canal to the intersection of East Iliff Avenue and South Ivanhoe Street extended, North along South Ivanhoe Street extended and Ivanhoe Street to East Evans Avenue, East along East Evans Avenue to South Kearney Street extended, North along South Kearney Street extended and South Kearney Way to East Jewell Avenue, East along East Jewell Avenue to South Leyden Street, North along South Leyden Street to East Mexico Avenue, East along East Mexico Avenue to South Monaco Boulevard, and North along South Monaco Boulevard to the point of beginning.

IT IS FURTHER RESOLVED that, the attendance area of HAMILTON JUNIOR HIGH SCHOOL for all 7th and 8th grade pupils shall be the attendance area of THOMAS JEFFERSON JUNIOR-SENIOR HIGH SCHOOL as of September 1968, and those attendance areas described in the foregoing Sections Numbered 6, 8, and 9.

IT IS FURTHER RESOLVED that the attendance area of THOMAS JEFFERSON JUNIOR-SENIOR HIGH SCHOOL for all 9th grade pupils shall consist of the attendance area of the THOMAS JEFFERSON JUNIOR-SENIOR HIGH SCHOOL as of September 1968, and those attendance areas described in the foregoing Sections Numbered 6, 8, and 9.

Exhibit Annexed to Complaint

IT IS FURTHER RESOLVED that, on and after the opening of school in September 1969 the boundaries of the attendance areas for the following junior high schools in this School District be, and they are hereby, changed as follows:

A. The following described area shall be detached from COLE JUNIOR HIGH SCHOOL attendance area and shall become a part of BYERS JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of East 35th Avenue and York Street, thence: South on York Street to East 33rd Avenue, West on East 33rd Avenue to the alley between High Street and Williams Street, North along the alley between High Street and Williams Street to East 35th Avenue, and East along East 35th Avenue to the point of beginning.

B. The following described area shall be detached from COLE JUNIOR HIGH SCHOOL attendance area and shall become a part of KUNSMILLER JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of East 34th Avenue and York Street, thence: East along East 34th Avenue to Elizabeth Street, South on Elizabeth Street to East 28th Avenue, East on East 28th Avenue to Steele Street, South on Steele Street to East 26th Avenue, West on East 26th Avenue to York Street, and North on York Street to the point of beginning.

C. The following described area shall be detached from COLE JUNIOR HIGH SCHOOL attendance area and shall become a part of RISHEL JUNIOR HIGH SCHOOL attendance area.

Exhibit Annexed to Complaint

Beginning at the intersection of East 34th Avenue and Elizabeth Street, thence: East on East 34th Avenue to Fillmore Street, South on Fillmore Street to East 32nd Avenue, East on East 32nd Avenue to Steele Street, South on Steele Street to East 31st Avenue, West on East 31st Avenue to Elizabeth Street, and North on Elizabeth Street to the point of beginning.

D. The following described area shall be detached from Cole Junior High School attendance area and shall become a part of Kepner Junior High School attendance area.

Beginning at the intersection of East 31st Avenue and Elizabeth Street, thence: East on East 31st Avenue to Steele Street South on Steele Street to East 28th Avenue West on East 28th Avenue to Elizabeth Street, and North on Elizabeth Street to the point of beginning.

Plaintiffs' Exhibit 5

Exhibit Annexed to Complaint

(Resolution No. 1531)

WHEREAS, pursuant to the Resolution of this Board of Education passed on May 16, 1969, and numbered 1490, in response to the subsequent specific direction of this Board of Education, and in accordance with Article VIII, Section 2 of the By Laws of this Board, the Superintendent of this School District has made a proposal for stabilization of memberships of elementary schools in Northeast Denver and for further integration of the Denver Public Schools which proposal suggests, among other things, certain changes in the boundaries of the attendance areas of certain elementary schools of this School District as one of the steps designed to improve educational opportunity in the public schools of this District;

WHEREAS, this Board of Education did receive said proposal of the Superintendent for study and action and did order that the citizens of this School District be given an opportunity to express their views on said proposal at public hearings set for that purpose; and

WHEREAS, this Board of Education, having heard the views of the citizens of this School District on the said proposal of the Superintendent; having considered racial and ethnic composition of pupil memberships in the elementary schools of this District, traffic patterns, distances, housing patterns, school building capacities, optimum pupil memberships for the schools concerned, pupil achievement data, potential quality of the instructional program, the need for providing transportation to pupils and the cost thereof; availability of time and staff to develop programs, communicate with parents and children, and to orient the personnel involved; and having otherwise informed itself on

the questions presented by the said proposal, FINDS that, because of the housing patterns in the City and County of Denver, certain elementary schools in Northeast Denver contain growing numbers of pupils of racial and ethnic minorities; that a reduction of such numbers is desirable as one of the steps to improve educational opportunity in such schools; and that the proposal of the Superintendent is consistent with the foregoing and, as hereinafter set forth, will reasonably accomplish such reduction and thereafter stabilize the racial and ethnic composition of pupil memberships in these schools and further the integration of the Denver Public Schools; and that the adoption of the said proposal is in the public interest;

NOW THEREFORE, IT IS RESOLVED by the Board of Education of School District No. 1 in the City and County of Denver and State of Colorado that the Superintendent is directed to develop plans in accordance with the concept of the Elementary School Complex as generally outlined in his report heretofore received by this Board of Education and entitled "Planning Quality Education," and to initiate implementation of such plans commencing with the opening of school in September of 1969, for the following two groupings of elementary schools of this District to be known as Complex 1 and Complex 2 respectively:

Complex 1	*Complex 2*
Ashley	Ashland
Carson	Barnum
Hallett	Boulevard
Montclair	Brown
Montclair Annex	Cheltenham
Palmer	Colfax

Exhibit Annexed to Complaint

Complex 1	*Complex 2*
Park Hill	Cowell
Philips	Eagleton
Steck	Edison
Teller	Fairview
Whiteman	Newlon
	Perry

It Is Further Resolved that, effective as of the opening of school in September 1969, the boundaries of the attendance areas of the following elementary schools in this School District be, and they are hereby, changed as follows:

The following described area shall be detached from the Montclair Elementary School area and shall become a part of the Philips Elementary School area:

Beginning at the intersection of East 16th Avenue and Kearney Street, thence; East along East 16th Avenue to Monaco Parkway, North on Monaco Parkway to Batavia Place, East on Batavia Place to Oneida Street, South on Oneida Street to East Colfax Avenue, West on East Colfax Avenue to Kearney Street, and North on Kearney Street to the point of beginning.

The following described area shall be detached from the Philips Elementary School area and shall become a part of the Ashley Elementary School area:

Beginning at the intersection of East 29th Avenue and Oneida Street, thence; East on East 29th Avenue to the alley between Olive and Pontiac Streets, South along the alley between Olive and Pontiac Streets to East 26th Avenue, West along East 26th Avenue to Oneida Street, and North along Oneida Street to the point of beginning.

Exhibit Annexed to Complaint

The following described area shall be detached from the PHILIPS ELEMENTARY SCHOOL attendance area and shall become a part of the PALMER ELEMENTARY SCHOOL attendance area:

Beginning at the intersection of East 26th Avenue and Kearney Street, thence; East along East 26th Avenue to Niagara Street, South on Niagara Street to East 23rd Avenue, West on East 23rd Avenue to Leyden Street, North on Leyden Street to East 25th Avenue, West on East 25th Avenue to Kearney Street, and North on Kearney Street to the point of beginning.

The following described area shall be detached from the PARK HILL ELEMENTARY SCHOOL area and shall become a part of the STECK ELEMENTARY SCHOOL area:

Beginning at the intersection of East 26th Avenue and Clermont Street, thence; East on East 26th Avenue to Dexter Street, South on Dexter Street to East 25th Avenue, West on East 25th Avenue to Clermont Street, and North on Clermont Street to the point of beginning.

The following described area shall be detached from the PARK HILL ELEMENTARY SCHOOL area and shall become a part of the STEELE ELEMENTARY SCHOOL area:

Beginning at the intersection of East 26th Avenue and Colorado Boulevard, thence; East on East 26th Avenue to Clermont Street, South on Clermont Street to East 25th Avenue, West on East 25th Avenue to Colorado Boulevard, and North on Colorado Boulevard to the point of beginning.

Exhibit Annexed to Complaint

The following described area shall be detached from the PALMER ELEMENTARY SCHOOL attendance area and shall become a part of the PHILLIPS ELEMENTARY SCHOOL attendance area:

Beginning at the intersection of East Louisiana Avenue and South Oneida Street, thence; East on East Louisiana Avenue to South Quebec Street, South on South Quebec Street to East Florida Avenue, West on East Florida Avenue to South Oneida Street, and North on South Oneida Street to the point of beginning.

The following described area shall be detached from the WHITEMAN, MOORE, MONTCLAIR, AND MONTCLAIR ANNEX ELEMENTARY SCHOOLS attendance areas and shall become a part of the BARRETT ELEMENTARY SCHOOL attendance area.

All of Lowry Air Force Base, east of Quebec Street, within the limits of the City and County of Denver.

The following described area shall be detached from the BARRETT ELEMENTARY SCHOOL attendance area and shall become a part of the MONTCLAIR ELEMENTARY SCHOOL attendance area.

Beginning at the intersection of East 32nd Avenue and Steele Street, thence; East along East 32nd Avenue to Jackson Street, South on Jackson Street to East 31st Avenue, West on East 31st Avenue to Garfield Street, South on Garfield Street to East 30th Avenue, West on East 30th Avenue to Monroe Street, South on Monroe Street to East 29th Avenue, East on East 29th Avenue to Garfield Street, South on Garfield Street to East 28th Avenue, West on East 28th Avenue to Cook Street, North on Cook Street to East 29th

Avenue, West on East 29th Avenue to Steele Street, and North on Steele Street to the point of beginning.

The following described area shall be detached from the BARRETT ELEMENTARY SCHOOL attendance area and shall become a part of the WHITEMAN ELEMENTARY SCHOOL attendance area.

Beginning at the intersection of East 34th Avenue and Steele Street, thence; East on East 34th Avenue to Monroe Street, South on Monroe Street to East 32nd Avenue, West on East 32nd Avenue to Steele Street, and North on Steele Street to the point of beginning.

The following described area shall be detached from the BARRETT ELEMENTARY SCHOOL attendance area and shall become a part of the MOORE ELEMENTARY SCHOOL attendance area.

Beginning at the intersection of East 36th Avenue and Jackson Street, thence; East on East 36th Avenue to Colorado Boulevard, South on Colorado Boulevard to the north boundary of the Clayton College property, West on the north boundary of the Clayton College property to Jackson Street, and North on Jackson Street to the point of beginning.

The following described area shall be detached from the BARRETT ELEMENTARY SCHOOL attendance area and shall become a part of the CARSON ELEMENTARY SCHOOL attendance area.

Beginning at the intersection of East 29th Avenue and Steele Street, thence; East on East 29th Avenue to Cook Street, South on Cook Street to East 28th

Avenue, East on East 28th Avenue to Monroe Street, South on Monroe Street to East 26th Avenue, West on East 26th Avenue to Steele Street, and North on Steele Street to the point of beginning.

The following described area shall be detached from the BARRETT ELEMENTARY SCHOOL attendance area and shall become a part of the ASBURY ELEMENTARY SCHOOL attendance area.

Beginning at the intersection of East 36th Avenue and Garfield Street, thence; East on East 36th Avenue to Jackson Street, South on Jackson Street to the north boundary of the Clayton College property, West on the north boundary of the Clayton College property to Monroe Street, North on Monroe Street to East 35th Avenue, East on East 35th Avenue to Garfield Street, and North on Garfield Street to the point of beginning.

Exhibit Annexed to Complaint

IT IS FURTHER RESOLVED that the Superintendent is directed to take steps to establish pre-primary educational programs in the schools of the North-Central portion of the District in September 1969, as proposed in his said report "Planning Quality Education."

IT IS FURTHER RESOLVED that the Superintendent is directed to develop and institute plans and programs to make Hallett Elementary School a demonstration integrated school as of September 1969, by use of voluntary transfer of pupils with transportation provided by the District.

IT IS FURTHER RESOLVED that the Superintendent is directed to continue the present practices of transporting pupils from Stedman Elementary School to relieve overcrowding at that school, and to obtain the reduction of a number of pupils attending the Stedman Elementary School necessary to permit removal of mobile classroom units from that school by providing transportation for such pupils to Denison, Force, and Schenck Elementary Schools.

IT IS FURTHER RESOLVED that the present practice of transporting pupils from Smith Elementary School to Alcott, Asbury, Doull, Force, McKinley, Moore, Slavens, and Stead Elementary Schools be continued.

IT IS FURTHER RESOLVED that, for the purpose of improving education and furthering of integration the schools included in Elementary School Complex 5 as described in the report "Planning Quality Education" that such schools be grouped for cooperative planning with the elementary schools of other elementary school complexes as follow, or with such other or different schools as the Superintendent

may designate from time to time, utilizing the criteria of ratio of school and group memberships, racial composition of memberships, potential for educational and social improvement, and school facilities; that such cooperative planning shall be accomplished by the local schools included within such groupings through planning committees composed of school staff members, P.T.A. representatives and other citizens in the community; that such planning committees shall be selected and shall operate under rules and regulations prescribed by the Superintendent; that any cooperative plans so developed shall be mutually agreed upon by such committees prior to implementation thereof; and that implementation of such cooperative plans may be undertaken by the Superintendent within the limitations of law and the policies of this Board of Education.

Schools in Complex 5	*Schools Grouped With Complex 5 Schools*
Crofton	Bradley
Harrington	Pitts
	Slavens
	University Park
Wyatt	Bromwell
	Moore
	Stevens
Columbine	Godsman
Gilpin	Goldrick
	Gust
	Sabin
	Schmitt
	Traylor

Exhibit Annexed to Complaint

Schools in Complex 5	*Schools Grouped With Complex 5 Schools*
Whittier	Asbury
	Lincoln
	Rosedale
	Thatcher
	Washington Park
Mitchell	Denison
Stedman	Doull
	Force
	Johnson
	Schenck
Smith	Ash Grove
	Cory
	Ellis
	Fallis
	Knight
	McMeen

Motion for Preliminary Injunction

(Filed June 19, 1969)

Come Now the Plaintiffs, by their attorneys, and move the Court for a preliminary injunction enjoining the defendants, and each and every of the defendant School District's officers, agents, servants, employees and each of them, and all other persons in active concert or participation with them be, preliminarily during the pendency of this action and permanently thereafter, restrained and enjoined

(a) from in any way interfering with, modifying, cancelling or rescinding the purchase order for said twenty-seven school buses;

(b) from destroying, changing or otherwise modifying in any manner whatsoever, or relocating those documents, contracts, schedules, or other writings and memoranda relating or pertaining to the implementation of Resolutions No. 1520, 1524 and 1531.

(c) from taking any action or making any communication to faculty, staff, parents or students during the pendency of this action or before permanent orders are issued by this Court which would make it impossible or substantially more difficult to proceed with the implementation of Resolutions No. 1520, 1524, and 1531 at the start of the school year in September, 1969, with the exception that defendants shall not otherwise during such time be prevented from simultaneously preparing for the implementation of alternate or additional plans concerning the matters described herein as they so desire.

Motion for Preliminary Injunction

As grounds therefor plaintiffs incorporate herein by reference the allegations contained in their Complaint and further allege that certain of the defendants have been directed to and are in fact implementing the recision of Resolutions No. 1520, 1524 and 1531, and the substitute Resolutions therefor, and in addition have been directed to review the school bus purchase contract; that unless plaintiffs are granted preliminary relief, said implementation and review by the defendants may destroy, alter, modify, revoke or otherwise irreparably injure or prevent reinstatement and implementation of Resolutions No. 1520, 1524 and 1531. Plaintiffs will thereby sustain immediate and irreparable injury and damage for which they have no adequate remedy at law. This motion will be made and based upon the pleadings, records and proceeding herein.

BARNES & JENSEN
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Attorneys For Plaintiffs

Answer of Defendants John H. Amesse, Rachel B. Noel and James D. Voorhees, Jr.

(Filed July 16, 1969)

Come Now defendants John H. Amesse, Rachel B. Noel and James D. Voorhees, Jr., individually and as members, Board of Education, School District Number One, Denver, Colorado, and for answer to plaintiff's Complaint admit, deny and state:

I

Admit the allegations of Article I. Jurisdiction.

II

Admit the allegations of Article II. Parties.

III

For answer to the First Cause of Action:

1. Admit the General Factual allegations of the First Cause of Action.

2. Admit the allegations of the First Count.

3. As to the Second Count:

A. Admit the allegations referred to in paragraph A.

B. Answering paragraph B, deny that these answering defendant Board members participated in the recission of Resolutions No. 1520, 1524 and 1531 and state that their acts in voting against recission were motivated by the educational needs of the children of Denver. Further answering, these answering defendants are not advised as to the motivation of those defendant Board members voting to

rescind Resolutions No. 1520, 1524 and 1531 in so acting but that said Board members have stated repeatedly to these defendants that they so acted because of a mandate from the people of the City of Denver requiring said defendants so to act, and in order to restore the confidence of the people of Denver in the Board of Education so that a bond issue may be passed.

C. Admit the allegations of paragraph C.

4. As to the Third Count:

A. Admit the allegations referred to in paragraph A and the allegations of paragraphs B and C, except that these answering defendants allege that the pupil populations of East High School, Phillips Elementary School and Park Hill Elementary School were not, prior to the passage of Resolutions No. 1520, 1524 and 1531, substantially segregated on the basis of race and ethnicity, but that the pupil populations of said schools, without the passage and implementation of said resolutions, would inevitably and predictably have become segregated on the basis of race and ethnicity.

B. Answering paragraph D of the Third Count, these answering defendants are not advised as to the motivation of those defendant Board members voting in favor of rescission except as reflected in their statements quoted herein in answer to paragraph B of the Second Count. Further answering, admit that racial and ethnic separation existing in the schools affected prior to the passage of Resolutions No. 1520, 1524 and 1531 would have been significantly alleviated by the implementation of such resolutions.

Answer of Defendants John H. Amesse, Rachel B. Noel and James D. Voorhees, Jr.

5. Admit the allegations of the Fourth Count, except that these answering defendants deny that they acted as alleged in paragraph B.

6. As to the Fifth Count:

A. Admit the allegations referred to in paragraph A and the allegations of paragraphs C and D.

B. Answering paragraph B, admit that the pupil population of the schools affected by Resolutions No. 1520, 1524 and 1531 were, or were inevitably becoming, segregated on the basis of race and ethnicity and admit the remaining allegations of paragraph B, except that these answering defendants deny that assignment of large numbers of Negro or Hispano faculty is in and of itself a necessary cause of unequal educational opportunity where such teachers are qualified and experienced, unless the presence of concentrations of such teachers is viewed by the students as a confirmation and reinforcement of the separate and segregated racial or ethnic character of such schools.

7. As to the Sixth Count, admit the allegations thereof, except that these answering defendants deny that they acted as alleged in paragraph D and allege that the pupil populations of East High School, Phillips Elementary School and Park Hill Elementary School were not, prior to the passage of Resolutions No. 1520, 1524 and 1531, substantially segregated on the basis of race or ethnicity but that the pupil populations of such schools without the passage and implementation of said resolutions would inevitably and predictably have become segregated on the basis of race and ethnicity.

Answer of Defendants John H. Amesse, Rachel B. Noel and James D. Voorhees, Jr.

8. For further affirmative answer to the First Cause of Action, these answering defendants state:

(A) The increasing urbanization of American society has produced educational problems for big city public school systems (including Denver) unique to this time and place and not subject to solution by traditional educational patterns of staffing, of attendance, of curriculum, and of facility needs. These inadequacies in urban public education are generally not recognized, or if recognized, are not accepted by the majority population.

(B) Unmet, these new urban educational problems result in inevitable and substantially irreversible educational inequality for a large and increasing number of American urban children, a high proportion of whom are from racial or ethnic minorities and/or are the products of the subculture of urban poverty. In Denver the fact of such inequality is demonstrated by differences between and among schools in standard achievement scores, the incidence of dropouts, differences as to individual course offerings, the quality of teaching and numbers of faculty transfers, school discipline, the degree of motivation and achievement in students, and other observable factors.

(C) The presence of large numbers of children affected by educational and learning disabilities caused by race, ethnicity and/or poverty in any school reduces, and may substantially eliminate, the effect in such school of any known remedial or compensatory programs which are economically feasible.

(D) Against this background and upon the professional recommendation of its Superintendent of Schools as being

educationally valid, defendant Board of Education enacted Resolutions No. 1520, 1524 and 1531. Its intent, in so acting, was to begin to meet and to overcome the conditions stated herein which had resulted and are now resulting in grossly unequal educational opportunity for many children.

(E) Resolutions No. 1520, 1524 and 1531 were adopted after citywide publicity, public hearings (including television presentations), neighborhood meetings and widespread opportunity for interested and concerned citizens to comment. Comments communicated to defendant Board of Education in public meetings and to these defendants both publicly, and privately, were in general favorable to the educational purpose and intent of said resolutions, but were critical of them for non-educational reasons, among which were:

(a) On one hand, that the resolutions represented only a token approach to the problems of the School District, and on the other, that some alleged constitutionally protected right of parents to select the school their children should attend was threatened.

(b) That in individual cases the resolutions might result in inconvenience to individual citizens.

(c) That the resolutions did not reflect the will of the majority of the people of the School District and were being imposed upon the majority by a vocal and dangerous minority as a sociological experiment.

(d) That the resolutions represented an interference on the part of the School District with the right of

citizens to purchase and reside in residences of their choosing.

(e) That the resolutions would require Anglo children to attend school with minority children and would subject such Anglo children to an inadequate educational opportunity and/or the possibility of physical harm. Certain parents of minority children affected by the resolutions also expressed fears for their children in primarily Anglo schools.

(f) That the resolutions and their implementation would require expenditure of School District funds for transportation, which expenditure was stated to be unnecessary and uncalled for.

(F) Few, if any, objections asserted that the educational purpose of the resolutions was improper.

(G) The decision of defendant Board of Education to adopt and thereafter to implement Resolutions No. 1520, 1524 and 1531 was made after the most careful balancing of the objections presented, against the known existence of the conditions requiring change, in order to begin to equalize the educational opportunities of those many children not now receiving equal opportunity. The programs established by said resolutions were and are deemed educationally sound, economically feasible and conceptually valid for the alleviation of educational inequalities in this School District, and were recommended for such purpose by the Superintendent of Schools and his staff. They represent a beginning, at various levels and with various approaches, of the development of programs designed to meet the peculiar learning problems of children disabled from achieve-

ment by the fact of minority racial or ethnic isolation and/or isolation by the culture of poverty.

(H) No viable alternative to said resolutions has been proposed by those defendant members of the Board of Education who voted to rescind said resolutions, except to propose certain minimal voluntary programs. Such a proposal appears to constitute on the one hand recognition by the present majority of this Board that educational inequality exists in the public schools of this District, and at the same time limits solutions designed to establish equality of opportunity to those approved by a majority of the electors of this District, such majority comprising, in general, persons not affected by the problems which require solution.

(I) The apparent assumption on the part of many citizens and of the majority Board members voting to rescind said resolutions that the resolutions represent the first step toward a program of total racial and ethnic balance throughout the School District is not justified by any past Board action; said resolutions represent an attempt to ascertain on a broad pilot basis whether and to what extent integregation of pupil populations does result in equalization of educational opportunity and are designed to develop and prove the validity (or invalidity) of various programs and approaches to the unmet needs of modern urban education.

(J) These answering defendants submit that failure to implement Resolutions No. 1520, 1524 and 1531 in September of 1969 will, in addition to the consequences alleged in plaintiffs' First Cause of Action, effectively terminate any possibility of material improvement in the unequal educa-

tional opportunity now offered to a large number of minority racial and ethnic children in the Denver public schools and will, therefore, in a real sense, condemn very many children of this School District to continuing inequality in the education available to them.

WHEREFORE, these answering defendants, having fully answered plaintiffs' First Cause of Action, pray that the Court grant the relief prayed for in plaintiffs' Prayer for First Cause of Action, except that no recovery of costs be adjudicated against these defendants.

For answer to the Second Cause of Action:

1. As to the First Count:

A. Incorporate herein by reference their answer to the First Cause of Action.

B. Answering paragraph B, admit that the acts described in paragraph B have resulted in and have maintained racial and ethnic segregation within the School District but deny that said acts were taken deliberately and purposely by these answering defendants to create, foster or maintain racial and ethnic segregation.

Further answering the allegations of paragraph B of the First Count, these answering defendants:

1. Admit that the use of a so-called "neighborhood school" attendance policy results, and has resulted, in significant racial and ethnic segregation in the School District, reflective of segregated residential patterns but deny that they acted with respect to any "neighborhood school" policy with the intent and purpose to create, foster and maintain racially and ethnically segregated schools.

Answer of Defendants John H. Amesse, Rachel B. Noel and James D. Voorhees, Jr.

2. Admit that school attendance area boundaries have been created, altered and enforced with the effect of establishing and maintaining racial and ethnic segregation within the School District but deny that they acted with respect to said boundaries with the purpose and intent of creating, fostering and maintaining racial and ethnic segregation within the School District.

3. Admit that historically from time to time optional attendance areas have been established for various schools within the School District but deny that said optional attendance areas are or at any time were in contravention of the defendant Board of Education's existing published policies and resolutions; deny that these answering defendants participated in the establishment of any optional attendance area; and deny that any optional attendance areas were applicable only to Anglo children.

4. Admit that historically a disproportionate number of Negro and Hispano faculty and staff have on occasion been assigned to those schools having predominantly Negro and Hispano pupil populations; admit that such assignments may have further confirmed and solidified the racially and ethnically segregated character of such schools; but deny that these answering defendants acted with respect to such assignment of Negro and Hispano faculty and staff with the purpose and intent to create, foster and maintain racial and ethnic segregation in the School District.

5. Admit that historically optional attendance areas have from time to time been created for certain

schools undergoing transition to gradually increasing proportions of Negro and/or Hispano pupil population; deny that these answering defendants participated in the establishment of any optional area; and admit that optional areas may have had the result alleged, that is, the retention and confinement of Negro and/or Hispano pupils to schools of predominantly Negro and/or Hispano pupil populations.

C. Admit the allegations of paragraph C of the First Count.

2. As to the Second Count:

A. Incorporate by reference their answer to the First Cause of Action and their answer to paragraph C of the First Count of the Second Cause of Action.

B. Answering paragraph B:

1. Admit that certain schools in predominantly Negro and Hispano attendance areas may have physical plants, equipment and curricula inferior to some schools with predominantly Anglo student pupil populations but deny that all predominantly Negro and Hispano schools have physical plants and equipment inferior to that provided to schools with predominantly Anglo student pupil populations and deny that to their knowledge inferior materials and supplies have been furnished to predominantly Negro and Hispano schools.

2. Admit that in certain schools with predominantly Negro or Hispano pupil populations there has been

a disproportionately large number of less experienced faculty assigned and at the same time, as to certain schools with predominantly Anglo pupil populations, that there has been a disproportionately large number of more experienced faculty assigned.

C. Answering paragraph C, admit that schools provided with resources inferior to other schools do provide for the students assigned to such schools an educational opportunity unequal and inferior to that provided by other schools in the School District.

3. As to the Third Count:

A. Incorporate by reference their answer to the First Cause of Action.

B. Incorporate by reference their answer to paragraph C of the First Count of this Second Cause of Action.

C. Admit the allegations of paragraph C.

D. Admit the allegations of paragraph D.

4. As to the Fourth Count:

A. Incorporate by reference their answer to the First Cause of Action.

B. Answering paragraph B, admit the existence in certain schools of the School District of various systems of pupil ability grouping.

C. Answering paragraph C, admit that among other criteria used in ability grouping is the ability to learn, and admit that classification as alleged may result in assignment to regular or accelerated educational programs in individual courses.

Answer of Defendants John H. Amesse, Rachel B. Noel and James D. Voorhees, Jr.

D. Answering paragraph D, admit that under certain circumstances the application and administration of systems of ability grouping may result in the denial to students subject thereto of an educational opportunity equal to that offered to other students but deny that such ability grouping will always afford an unequal educational opportunity as between the minor Negro and Hispano plaintiffs and Anglo students of comparable ability and qualification.

WHEREFORE, having fully answered the Second Cause of Action these defendants pray that the relief prayed for in plaintiffs' Prayer for Second Cause of Action be granted, except that should the Court order that any comprehensive plan be submitted as prayed in paragraph A 1.(b) and/or paragraph A 3.(b) thereof, these defendants suggest that any such plan should be educationally sound and should be implemented within a time schedule fixed by the Court, and except that no recovery of costs be adjudicated against these answering defendants.

Respectfully submitted,

/s/ RACHEL B. NOEL
Rachel B. Noel

/s/ JOHN H. AMESSE
John H. Amesse

/s/ JAMES D. VOORHEES, JR.
James D. Voorhees, Jr.

(Addresses of the Answering Defendants omitted)

* * * * *

(Certificate of Service omitted)

Hearing on Preliminary Injunction July 16-22, 1969

[25] • • •

RACHEL B. NOEL, a witness called by and on behalf of Plaintiffs, having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Greiner:

The Court: Give us your name and address, please.

The Witness: Rachel B. Noel, 2601 Adams.

By Mr. Greiner:

Q. Mrs. Noel, you are one of the Defendants in this case? A. Yes.

Q. You're a member of the Board of Education of School District Number 1? A. Yes.

Q. And how long have you been a member of the Board [26] of Education? A. I was elected to the Board in May 1965.

Q. What was your current address? A. 2601 Adams.

Q. How long have you lived at that address, Mrs. Noel? A. About ten years.

Q. So you moved there in approximately 1958? A. Right.

Q. In 1958, Mrs. Noel, did you have any children going to the elementary schools of the Denver School District? A. Yes, I did. I had two children attending Park Hill School.

Q. Now during the course of your residence or during the course of their progress through elementary school was there any change made in the school of their attendance? A. My daughter was in second grade when

she went to Park Hill and she attended second, third and fourth grades, but when she went to fifth grade Barrett School had been built and she completed her elementary education at Barrett.

Q. Barrett opened in 1960? A. 1960.

Q. Do you recall approximately what the racial composition of Park Hill Elementary School was back in 1958 and 1959? A. Predominantly white.

[27] Q. And when Barrett opened, do you recall whether or not it was predominantly Anglo or predominantly Black? A. Predominantly Black.

Q. So then your child was sent from an integrated school to a segregated school? A. That's right.

Q. How if at all, Mrs. Noel, did that event affect your awareness of school board policy? A. Well, it was very clear that when she started to Park Hill School in the second grade and she was being transported to Park Hill School by a bus, at that time the bus was just taking—was taking at least half and half if not more white kids to Park Hill School, and in the course of the time she was attending, and I would say as I can recollect, a year or year and a half, more Black kids were riding that bus to Park Hill School, and it seemed very clear to me and to many other parents that Barrett School was built—Discussions began about it being needed because so many Black kids were coming into Park Hill School, the bus was practically carrying Black kids to Park Hill School and Barrett School was built at that time. It just seemed so clear to us that this was the reason.

Q. Now, Mrs. Noel, with respect to your daughter's change in school, from Park Hill School, which was integrated to the Barrett School, which was segregated, did that event [28] lead you to any sort of an appraisal or

an awareness of differences in the educational programs at those two schools? A. Well, my daughter told me—she was in the fifth grade at Barret School when she entered, when Barrett opened; that she was having the same thing in the fifth grade that she had had in the fourth grade at Park Hill during several conversations with her about not having much homework or not seemingly having much interest. And I went to school and I talked to the teachers—to her teacher and I talked to the principal and—as a parent, trying to find out what it was. I sat in on the classes. And I wanted to see what it was. And to the best of my judgment and certainly my great concern based on her statements to me—it seemed that she was not getting what she should have gotten and what she would have gotten at Park Hill since she was having the same thing over in the fifth grade as she had had in the fourth.

Q. Now that event occurred sometime in 1960 with the opening of Barrett School? A. Right.

Q. Within the next two years, Mrs. Noel, did any other event occur that again raised the issue of whether additional new schools be built in northeast Denver? A. I'm sorry. I didn't get the first part of your question.

[29] Q. Between 1960 and 1962 was there any proposal of the School Board which again, as had Barrett, brought into focus the question of whether new schools should be constructed in northeast Denver? A. It was at that time—the then superintendent of schools recommended the building of a junior high school at 32nd and Colorado which is the Barrett side, actually.

Q. Was there any community concern over that proposal? A. There was great community concern, not only in

the Black community but throughout the city that the day that school opened it would be a segregated school.

Q. Mrs. Noel, did that concern lead to any affirmative action by the Board in 1962? A. The Board of Education appointed a special committee on equality of educational opportunity in November I believe of 1962.

Q. Is it not a fact, Mrs. Noel, that you served on that committee? A. I was a member of that committee?

Q. Now how long approximately did the committee deliberate? A. Let's see, the report was presented in 1964. So, it's about 18 months.

Q. What sort of responsibilities were given to this special committee? [30] A. The committee was asked to look throughout the school system concerning equality of educational opportunity with special reference to racial and ethnic factors.

Q. During the course of its deliberation, Mrs. Noel, while the committee was deliberating, did the Board of Education formulate any new policy with respect to the racial characteristics of the schools? A. This policy 5100 was formulated by the Board after the recommendations to the Board of Education from our committee had been made.

Q. Does policy 5100 set forth in Plaintiffs' Exhibit 1 which you now have in front of you— A. Yes.

Q. Was policy 5100 passed by the Board at the request of this special committee? A. Yes.

Q. Was that one of the recommendations of the committee? A. Yes.

Mr. Greiner: Your Honor, we would move the introduction of Plaintiffs' Exhibit 1.

The Court: Do you have any objection?

Mr. Craig: Your Honor, we have already stipulated to the admission of that exhibit.

The Court. Very well. It's received.

(Whereupon, Plaintiffs' Exhibit 1 received in evidence.)

[31] The Court: It hasn't been before. Those stipulated exhibits I think the order should provide they are all received and you can draw up a list when you have an opportunity for both sides, Mr. Kerr.

The Clerk: Yes, Your Honor.

By Mr. Greiner:

Q. Mrs. Noel, the next exhibit is Plaintiffs' Exhibit 20G which is also, Your Honor, one of the stipulated exhibits. Calling your attention, Mrs. Noel, to Plaintiffs' Exhibit 20, during the course of its deliberations did the committee come to any kind of conclusion as to whether or not it made any difference whether the segregated schools were segregated by force of law or simply by intent?

Mr. Craig: Your Honor, I'm going to object to that question. I think the exhibit speaks for itself and the result of a deliberation of that committee.

The Court: True. Sustained.

Mr. Greiner: Your Honor, I might point out—

The Court: I'll read the report.

Mr. Greiner: Well, it's a hundred some pages long and I was trying to point out the particular aspects of the report upon which we will rely, Your Honor.

The Court: Well, that's different. You go ahead. Are you going to have her sum it up?

Mr. Greiner: Yes, Your Honor.

[32] The Court: Do you object to this?

Mr. Craig: I do object, Your Honor. I object to the witness just reading back what the report says.

The Court: May I take a look at it?

Mr. Craig: Your Honor, I think counsel can point to the sections in which he relies in his summary of this case.

The Court: That's better, I think. Why don't you just call her attention to the recommendations and the conclusions that you wish to bring forward?

Mr. Greiner: That was my intention, Your Honor.

Q. Mrs. Noel, directing your attention to Page 6 of the report did the committee reach any conclusion whether there was a possibility of unequal educational opportunity existing due to the fact of segregation in the schools? A. Yes, it did.

Q. In summary, Mrs. Noel, what was the committee's conclusion? A. That there was in Denver real possibility of unequal educational opportunity because of the existence of clusters of minorities, racial and ethnic groups within the city.

Q. Now during the course of its deliberations, Mrs. Noel, did the committee consider the Board's—the School Board's boundary policies? [33] A. Yes, it did.

Q. Were those policies then in writing? A. They were not in writing at the time the committee was investigated.

Q. Did the committee make any recommendation to the Board as to whether or not those policies should be reduced to writing? A. Yes, it did.

Q. Was that recommendation followed? A. This recommendation was followed.

Q. Again, Mrs. Noel, calling your attention to Page A-5 of the exhibit, did the committee reach any conclusions as to whether because of segregation, whether the cause of segregation had any effect upon the detrimental effect of that segregation?

Mr. Craig: I'm going to make the same objection. I think Page A-5 speaks for itself.

The Court: True, but he is just calling attention to the fact that it did make a recommendation. I don't think we're in any trouble yet. Overruled.

Mr. Craig: My point is, if the testimony paraphrases what the report says then we could have some conflict, and I think we ought to stick to what the report does say.

The Court: Well, we will see what it's leading to.

Q. Do you have the question in mind, Mrs. Noel? [34] A. I think as I look at this that the statement in 1954, the United States Supreme Court stated that segregated education is inherently unequal education. And that there was ample authority for such a statement. While the Court in that instance was concerned with segregation established by law—

The Court: Is she reading from the report now?

Mr. Greiner: Yes.

A. —the committee is persuaded that the statement can correctly be made where de facto segregation and minority races occur because the factors which—the most obvious of which is a pattern of housing restriction.

Q. So then the commission's conclusion was that the cause of the segregation didn't make any difference? A. That's right.

Q. Calling your attention to Page D-12 of this report, Mrs. Noel, in the course of its duties, did the commission have occasion to examine the Board's policy regarding the assignment of minority teachers? A. Yes, it did.

Q. What conclusions did the committee reach regarding these policies of the Board? A. The committee felt because of the great and high proportion of minority teachers and in minority schools that there was a policy of assigning them to schools that had high [35] percentages of minority population. And there is a table—or there should be—that shows this very definite—

Q. That's at Page 36 in the appendix of the exhibit? A. Yes, I think it is.

Q. And that shows the concentration of minority teachers in minority schools? A. Right.

Q. Mrs. Noel, in view of that conclusion of the committee, did it make any recommendations to the Board? A. Yes, it did. The committee recommended that the Board of Education should establish—this is the first recommendation in this group—and enforce a policy that requested teachers of minority background, that they will be assigned throughout the system.

Q. Was that recommendation accepted by the Board? A. I don't believe that that is a part of the policy in regard to teachers—teacher assignments today. However, this was a recommendation.

Q. Mrs. Noel, I'd like to call your attention to Plaintiffs' Exhibit 26. This I don't believe has been stipulated to, Your Honor. And, I would ask you if you can identify

Plaintiffs' Exhibit 26? A. This is Denver School policy employees' change of assignment, 1617(a).

Q. That's a policy 1617(a). Now, can you tell from [36] the exhibit, Mrs. Noel, when that policy was adopted by the Board?

Mr. Craig: Your Honor, at this point I just want to interrupt to state that this is a policy—this policy is incorporated in Exhibit 20 which we believe we have agreed to the admission of.

Mr. Greiner: Fine.

A. The date is April 1st, 1963.

Q. So then this was the policy on teacher assignment that was in existence when your committee made this conclusion about the assignment of minority teachers? A. Yes, because this report was issued in 1964.

Q. And there has been no change in policy 1617(a) since the issuance of your report? A. Not to my knowledge.

Mr. Greiner: I take it then, Your Honor, that Exhibit 26 will be received?

The Court: Well, it's part of Exhibit 20 he says and stipulated to.

Mr. Craig: Yes, Your Honor, we didn't think it necessary to stipulate to these individually if they're part of another exhibit.

The Court: We will receive 26 anyway.

(Whereupon, Plaintiffs' Exhibit 26 was received in evidence.)

[37] Q. Mrs. Noel, can you tell us then after the report of this special committee, what actions the Board took

which again brought up for the community's consideration the issue of whether schools in northeast Denver—whether there should be built new school? A. Well, to the next concern of the Board of Education in regard to building new schools, as I remember, was the building of the addition to Hallett School.

Q. That's an elementary school? A. That's an elementary school. And discussions concerning this began soon after I became a member of the Board.

Q. And that was in— A. In 1965.

Q. In May? A. I think it began in June.

Q. Now again, what was the concern about building an addition to Hallett School? A. The Superintendent had recommended that eight classrooms should be added to Hallett because of its overcrowdedness and I felt that this would be adding more classrooms—would be really making more space for segregation and opposed it on those grounds.

Q. Now at that time in 1965 was Hallett a predominantly a Negro school? [38] A. Hallett was becoming—growing more predominantly Negro every day.

Q. Now did that community concern, Mrs. Noel, about those additions to Hallett—and by the way those additions were built were they not? A. Yes.

Q. Did that concern lead to the formation of another study committee? A. The concern about Hallett—there was also a request for additions to Stedman. There was a realization of overcrowdedness at both Hallett and Stedman, and in addition, Smith Schools. And the fact that they were predominantly segregated and all of this I think in the discussions about what to do led to the appointment by the Board of another committee called the Advisory Council.

Q. Do you recall approximately when that committee was appointed? A. Let's see. In 1966, I think.

Q. Handing you what's been received into evidence as Plaintiffs' Exhibit 21, Mrs. Noel, that is the report of this committee which you have been describing? A. Yes.

Q. The Advisory Council? A. The Advisory Council on equality of educational opportunities.

[39] Q. Now was any particular charge given or any set of responsibilities defined by the Board of Education with respect to the responsibilities of this Advisory Council? A. In the charge the Advisory Council was asked to advise the Board—recommend to the Board about location of new schools and additions in northeast Denver. And about changes in policies the Board had in this regard.

Q. Mrs. Noel, through that report, Exhibit 21, how did the Council answer those questions which were put to them by the Board?

Mrs. Craig: Your Honor, I'm going to object to that question again. It isn't clear that Mrs. Noel was a member of that Council, and again the report speaks for itself.

The Court: True. But, am I going to have to read all these? Eventually I suppose I am, but as I understand it she's just going to call attention to the recommendations of the Council, is that correct?

The Witness: That's correct, as I understand it.

The Court: On the opening of new schools? I'll permit her to do that.

The Witness: In the answer to the charge on Page 84, the Committee came to the conclusion that no schools should be built in northeast Denver until plans are developed to implement Paragraph 1(b)

of Policy 21-C and Policy 4, 5100, and this calls attention to consideration of [40] the ethnic and racial characteristics of the school population making it to the extent of a heterogenous school community in the consideration of the building of new schools and the fact that the continuation of the neighborhood schools has resulted in the concentration and reduction of this concentration, should be considered in the location of new schools.

Q. Now, Mrs. Noel, during the period of 19—

The Court: Well, what happened? What happened to Hallett?

The Witness: The additions were built to Hallett. And, I voted against it.

The Court: Go ahead.

Q. During the period 1960, Mrs. Noel, through today, what in general has been the trend of racial composition in northeast Denver? A. The schools are becoming more segregated.

Q. Can you think of some example, and I'm referring you now to Page 7 of the report where there is detailed some of the rather dramatic changes that occurred at such schools as Stedman, Hallett and Barrett? A. This refers to the rapid change in the student population, rapid racial change composition of the student population at Stedman and at Stedman, in 1960, there were four percent Negroes in the total student population.

[41] Q. At Stedman? A. Yes. In 1966 the pupil population was then 89 percent Black.

Q. What is it today, Mrs. Noel? A. My guess is 99

percent Black and 44/100. And there is another statement also I'd like to call attention to, in October in 1960 at Hallett there was less than one percent and in October, 1966 the pupil population at Hallett was about 75 percent Black. Today I would judge that that is in the 90 percent category.

Q. So then this trend has continued over this whole period and still continues today? A. Yes.

Q. Now the 1967 report, did it make any recommendations as to possible method by which the Board could alleviate the segregated—the segregation which it found to exist? A. It made a recommendation of a study of an educational park as I recall and there was some other recommendations in regard to cultural and arts programs.

Q. Now about this time was the Board considering proposing a bond issue to the electorate in Denver? A. Yes.

Q. With respect to that bond issue was there a proposal for a program which might have served to relieve some of the segregation in the schools? [42] A. Yes as a part of the bond proposal there was presented to the electorate in 1967—in the fall of 1967, in the middle of the school concept as envisioned in the proposal would have alleviated some of the segregation in the schools in northeast Denver.

Q. Those middle schools would have drawn their students from a wider geographic area? A. Yes, from a wider area and transportation was to be involved.

Q. What happened to that bond issue proposal? A. Well, the bond proposal was defeated.

Q. Was it close? A. No, not really.

Mr. Greiner: Your Honor, at this time I would like to call the Court's attention to Plaintiffs' Exhibit 24 which has already been received.

The Court: Very well.

Q. Now from the time that the bond issue was defeated, Mrs. Noel, was that in the fall of 1967? A. Yes, 1967.

Q. Was there any other affirmative step between the fall of 1967 and the spring of 1968 taken by the Board to relieve this problem of segregation? A. There was continued pressure from parents in northeast Denver particularly Smiley about the need for [43] relief for that school and the growing segregation at that school and there was a proposal in the consideration of Hamilton Junior High that students from Smiley could be bused for an addition at Hamilton, as I recall.

Q. That was busing out from Smiley to Hamilton? A. Right.

Q. And was that going to do anything to help integrate Smiley? A. No, this was one-way busing into the new junior high school. It would have relieved the overcrowding at Smiley but the school would have remained segregated.

Q. So as late as 1967 and 1968 the Board had still not built a new junior high school to serve northeast Denver? A. No.

Q. During the course of that period did the Board receive proposals from the Division of Planning and Engineering Services with respect to the location of such new schools? A. Yes.

Q. Are Exhibits 22 and 23 examples of such proposals? A. Yes.

Mr. Greiner: Your Honor, these exhibits have also been stipulated into evidence.

The Court: Very well.

Rachel B. Noel—for Plaintiffs—Direct

Q. Mrs. Noel, was there any one event that occurred in April of 1968 which had an impact upon the future actions [44] of the Board with respect to this problem? A. I would have to say there were two events: one was the death of Martin Luther King and the second was the introduction of the resolution in regard to a plan for integrating the schools of Denver, and the reason I say two events is because the death of Martin Luther King and the meaning of that event to me as a member of the School Board, I think is of great importance because I felt that as a Black person in a policy making position, as well as Black people throughout this country, needed to see that equality of opportunities was available in this country. My role as a School Board member—I felt affected or should affect those Black children in these schools and I felt integration was important and because of that I introduced the resolution.

Q. Mrs. Noel, the resolution you refer to was Number 1490? A. Yes.

Q. And that's Plaintiffs' Exhibit 2. Well, Mrs. Noel, what did 1490 do with respect to School Board policy? A. I felt that it would implement a policy really that we already had, 5100, that had to do with equality of educational opportunity and that it really would make it real, would make it meaningful. And this direction to the Superintendent to draw up a plan for integrating the schools was then directed in order to bring about this. There are [45] two parts to this resolution. Part two is clarified in regard to certain points. That had to do with the plan.

Q. With regard to those points, Mrs. Noel, did 1490 recognize the effect of the continuance of the neighborhood school policy? A. Yes.

Q. What would that effect have been? A. It would have been more concentration, more segregation.

Q. Now also with respect to Policy 1490, Mrs. Noel, was there any indication in that policy regarding the desirability of integration? A. You mean 5100? Yes.

Q. Now with respect to 1490, your own resolution, was there an equation of integration with equality of educational opportunity? A. This was a part of the understanding of what it meant.

Q. So 1490 was introduced. Was it later passed by the Board? A. It was passed by the Board in May of 1968.

Q. And were there public hearings or meetings with respect to 1490? A. There was.

Q. Prior to its passage? [46] A. Yes, and great public interest and comment.

Q. So then under that it became the Board's official policy that the integration of the schools was one of the objectives of the Board? A. In the acceptance of the resolution in this regard, by a vote of five to two. Then the Board did in my view set then on a course toward integration.

Q. That was in May of 1968? A. Right.

Q. Now between May 1968 and the fall of 1968 that was the period during which Dr. Gilberts was developing the plan which he had been directed to propose? A. Right, the resolution stipulated that the plan was to be presented to the Board—submitted to the Board no later than September 30.

Q. Now calling your attention, Mrs. Noel, to November of 1968, going back in time for a moment, in October of 1968, the Superintendent presented his report? A. Yes, October 10, 1968.

Q. Now that was merely a report of an overall proposal for the integration of Denver schools? A. It was his plan in response to the direction of 1490.

Q. Now by the simple presentation of that report were there any affirmative steps taken to integrate any particular [47] school? A. There was a beginning implementation of the proposals from the Superintendent based on his plan.

Q. So that then in November of 1968 the Superintendent was directed by the Board to come up with a more specific proposal? A. I was not present at that November meeting, but as I recall the minutes, the Superintendent was asked—and it was in regard to what was going to happen in February that would need to be approved by the Board. As part of his plan only some parts of it were to take effect in the second semester and it was in this regard that he was asked to bring in these more specifics.

Q. Mrs. Noel, with respect to the minutes of the meeting of the Board of Education, are minutes taken at those meetings? A. Yes.

Q. And are they then prepared and in written form? A. Yes.

Q. I'm handing you what has been marked for identification as Exhibits 28, 29 and 32 and ask you if you can identify these.

The Court: Are those minutes?

Mr. Greiner: These are the official minutes. I really don't understand why the Defendants can't authenticate [48] their own minutes, Your Honor, but—

Mr. Creighton: Well those were the ones we got at 9:30 last night. We haven't looked at them but

certainly they may go in as authentic. We consider it admissible here.

The Court: Very well. Exhibits 28, 29 and 30 are received.

Mr. Greiner: The other one I believe was 32, Your Honor.

The Court: And 32.

(Whereupon, Plaintiffs' Exhibits 28, 29, 30 and 32 were received in evidence.)

Q. Mrs. Noel, was the policy of the school board with respect to school attendance area boundaries reduced to writing? A. Yes.

Q. And is that policy reflected in Plaintiffs' Exhibit 23? A. Yes, in 33.

Q. 33. Pardon me.

Mr. Greiner: Your Honor, again we would introduce Exhibit 33 which is in effect the neighborhood school policy of the district.

Mr. Creighton: That, Your Honor, is part of Exhibit 23 previously agreed to. That may go in.

The Court: We will receive it.

(Whereupon, Plaintiffs' Exhibit 33 was received in evidence.)

【49】 Q. Then finally, Mrs. Noel, with the giving of those instructions to the Superintendent is that the event then which began the process which ultimately led to resolutions 1520, 1524 and 1531? A. That's correct.

Mr. Greiner: Thank you, Mrs. Noel. Your witness.

* * * * *

[49] • • •

Cross-Examination by Mr. Craig:

Q. Mrs. Noel, during your direct examination you testified as to your daughter's educational experience in both Park Hill and Barrett Elementary Schools. A. Right.

Q. Where did she later go to junior high school? A. To Smiley.

Q. Where did she later go? A. To East.

Q. East Senior High School? A. Yes.

Q. And has she graduated from East? A. Yes.

Q. Has she been admitted to college? [50] A. Right.

Q. Which college is she— A. She attends Smith College.

Q. Has she graduated from Smith? A. No, she was a freshman last year.

Q. Could you give us your general impression of her academic achievements there at Smith? A. Well—

Q. Was it good, bad or poor or— A. It was good. I wished it had been better.

• • • • •

[51] • • •

Q. Mrs. Noel, you testified as to the proposal of the administration I believe to build a junior high school at East 32nd and Colorado Boulevard. To your knowledge, has that school been built? A. No.

Q. Have any other junior high schools been built since 1962 in this city? A. Well, Jesse Hamilton has been built.

Q. And where is Jesse Hamilton located? [52] A. I don't know the exact address; East Dartmouth and something.

The Court: I beg your pardon? Where?

The Witness: East Dartmouth. I don't know what the crossing street is. It's way out in southeast Denver.

Q. Has the Board approved plans and is it in the process of building or planning another new junior high school in southeast Denver? A. Also in southeast Denver, yes.

Q. Do you know if the Board has any present plans to build any new Junior high schools in northeast Denver? A. Present plans?

Q. Yes. A. Not to my knowledge.

Q. Do you know if there are present plans to utilize excess capacity in these new junior high schools to relieve some of the junior high schools in northeast Denver? A. Yes.

* * * * *

[54] * * *

Q. Mrs. Noel, you testified that in your opinion there was a trend in northeast Denver toward more segregation in the schools and Hallett Elementary School in particular. Can you tell us whether or not it was true that at the same time there was a parallel change in the racial composition of the residential area of that part of the city? A. Right.

* * * * *

[56] * * *

Redirect Examination by Mr. Greiner:

Q. Mrs. Noel, you mentioned in answer to the question, what is a segregated school. Some of the indicia of a

segregated school. What are some other indicia? Do segregated schools have for example higher drop out rates? A. I neglected to mention that. That's one of the—

Q. They do? A. That's one of the measurable—

Q. They tend here in Denver to have less experienced teachers?

Mr. Craig: Your Honor, I'm going to object to the form of the question that counsel is using. I believe they're leading and he has called Mrs. Noel as his witness.

The Court: Overruled.

Q. You may answer the questions, Mrs. Noel. Do they [57] have less experienced teachers? A. By and large this is true.

Q. Do they have fewer teachers with say more than ten years experience? A. I think this is correct.

Q. Do they have fewer children going on to college, Mrs. Noel? A. This is correct.

Q. So I take it that your daughter's example is not typical of what happens to minority children in this country? A. I would say the percentages are different.

Q. That's all reflected in the drop out rate for minority children, is it not? A. The percentages are higher in the drop out rate for minority children.

Q. Mrs. Noel, the 1964 report was unanimous, was it not? A. Yes.

Q. Now in reaching that unanimity was it necessary to reach any compromises on language? A. Yes, in the discussions of the committee as a whole, and this is what

this report is, a result of these discussions of the committee as a whole. The discussions were free and complete and so that all points of view were considered. And in the acceptance of the wording, in many cases there was a feeling by some that it should be stronger wording or [58] weaker and a more acceptable word than was used.

Q. Now, Mrs. Noel, with regard to the addition of Hallett, I believe you said that your quarrel with that decision was it kept those children in a segregated school. A. Yes, and it made more space for segregation.

Q. Does the same effect, the same confinement effect obtain when mobile units are brought into a segregated school? A. Yes.

Q. Also with respect to new additions that are being constructing in the Park Hill area, is there not now the building of a new addition to the new Park Hill Elementary School? A. Yes.

Q. So that is another case, another instance where there has been some additional construction? A. Yes.

Q. With respect to the mobile units in northeast Denver school, is it fair to say, Mrs. Noel, that there are more mobile units in that area than in any other area of the city? A. Yes.

Q. Do you have any idea approximately how many are being used there? A. Not really. I think there are twelve now at Stedman. Not Stedman, I mean Smith.

[59] Q. Smith is predominantly Black? A. About 99 percent Black. I believe there are four still at Stedman. I'm not positive.

Q. Are you aware of any mobile units at Anglo schools in northeast Denver, such as Ashley, for example? A. I'm not aware of them.

Rachel B. Noel—for Plaintiffs—Redirect

Q. Now, counsel inquired about the trend in the racial composition of the neighborhood. Mrs. Noel, when did the direction of that trend become apparent? A. At the building of Manual High School.

Q. Approximately when was that? A. That began in 1950; in the 50's. Now, I'm not certain of that date.

Q. Now, when you came on the school board in 1965, was the school board aware of this trend? A. Yes.

Q. Did the school board make any changes in its policies in view of its awareness of this trend? A. Well, the consideration of racial and ethnic factors was a part of the policy and this is policy 1222-C, I think is the number.

Q. Mrs. Noel, since you have been on the Board, do you recall any school attendance area boundary changes in northeast Denver which have had the effect of improving the racial composition of the school affected? [60] A. Boundary changes?

Q. Up until the time of the passing of these resolutions. A. I don't recall any.

Mr. Greiner: No further questions.

The Court: What is a mobile unit?

The Witness: It's a separate unit that holds one classroom and teacher and I think up to thirty students can be in there. It's located close to the school building.

The Court: They have some at Gove? Are those mobile units?

The Witness: Those were I think supposed to be when they were first put in. You were talking about the things still there. But, these I'm talking about can be really moved.

The Court: I see.

A. Edgar Benton—for Plaintiffs—Direct

[61] * * *

A. Edgar Benton, a witness, called by and on behalf of plaintiffs, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnes:

The Court: Please state your name and address.

The Witness: My name is A. Edgar Benton, 901 Race Street, Denver, Colorado.

By Mr. Barnes:

Q. Mr. Benton, were you ever a member of the Board of Education of School District No. 1, a defendant in this action? A. I was.

Q. Will you give the dates during which you were a member? A. I was elected in May, 1961 and served until May, 1969.

Q. You were on the Board then during the period described by Mrs. Noel in the previous testimony? A. I was.

Q. And you were on the Board in the Fall of 1968 [62] when Dr. Gilberts, the superintendent, presented his plans in response to 1490? A. Yes.

Q. The date of that presentation was approximately October 10, 1968? A. That's correct.

Q. What was the response of the Board following that presentation?

The Court: What do you mean? Did they approve it or what—

Q. Did they approve and enforce the plan in its entirety? A. Dr. Gilberts presented his plan not for enforcement or for approval at that time, but for considera-

tion and study by the Board of Education and by the community so the Board not officially at that time, but I think informally received Dr. Gilberts' report for consideration and for evaluation, and this led to a series of conferences with the superintendent and other meetings for purposes of the consideration and evaluation of the report.

Q. Did this lead to action by you at the meeting of the Board, November 21st, 1968? A. Oh, the meeting indicated the question which had been presented to the Board for its consideration stemming primarily from interested parents in the Park Hill area and [63] particularly the Smiley Junior High School area, was what steps could be taken effective in the Spring semester of 1969 to alleviate not only the overcrowding but also the intensified segregation at Smiley Junior High School. In response to that request and concern of the citizenry of that area, I suggested not in the form of a motion but in the form of a suggestion to the superintendent for his consideration that there might be a possibility of alleviating the problem at Smiley by removing some of the Black children from Smiley and putting those children in non-segregated schools and replacing them with children already riding buses then being transported to Hill Junior High School, Merrill Junior High School and perhaps some others. So the effect of my suggestion would have been to reduce the population at Smiley and to improve the racial balance at Smiley. Dr. Gilberts indicated he would consider this suggestion and report to the Board.

Q. During that period of time, Mr. Benton, that you were on the Board, had there been prior discussion of the problems at Smiley? A. The problem at Smiley came forcibly to the attention of the Board of Education in 1962 when Dr. Oberholtzer, the then superintendent, made his sugges-

tion for consideration by the Board that a new Junior High School be built at 32nd and Colorado and the Smiley problem, as it were, was a [64] matter of constant concern, consideration and attention by the Board from that time through the present period, really.

Q. Have there been expressions—was there evidence of citizenry concern throughout this period? A. Yes, there was constant evidence of concern on the part of the citizens in the community with the need for the Board of Education to take action to deal with intensifying segregation at Smiley Junior High School and the overcrowding that was present there.

Q. You say there was constant concern by the Board about this problem since 1962? What do you mean by that? A. By that I mean that the matter was constantly before the Board for its consideration. It represented a difficult question for the Board which the Board of Education had not previously had to consider and the debate which occurred I would say was a constant debate. That isn't to say it occurred on every occasion when the Board of Education was either in formal or informal session, but it continued to be one of the dominant elements of the Board's activity during that period to debate. The debate was not only constant; it was of an interesting characteristic in that it ranged all the way from fairly mild dialog to very vigorous confrontation of viewpoints among members of the Board.

Q. Were the educational disadvantages of segregation discussed in those meetings? [65] A. The educational disadvantage of segregated education were always urged by members—certain members of the Board as a basis for modifying Board policy with respect to the school and the

schools generally, and therefore the debate often involved a consideration of the disadvantages of segregated schools.

Q. Now, throughout this period, what had been the racial composition of Smiley Junior High School? A. I can't recall of course the precise percentages but it's my recollection that at the outset of this consideration Smiley was predominantly Anglo in its pupil composition. But it was changing at a progressive rate by significant percentages each year to the point where it has now achieved which I understand to be perhaps 70 percent Black in its composition. So that this was a progressive rate of change from predominantly Anglo to predominantly minority school.

Q. And throughout this period was there not only consideration by the Board of the problem, but were there expressions of interest from the citizenry? A. Yes. I think it would be fair to say that a common presentation at meetings of the Board of Education would be delegations of citizens and organizations from the Park Hill area calling the Board's attention to the unresolved problems of declining educational opportunities in the Park [66] Hill and particularly Smiley area.

Q. During this period in your judgment, had any effective acts or were there any effective steps taken to prevent the gradual segregation of Smiley Junior High School? A. There were steps taken and I suppose if one tried to look at the seven year period in its totality, one could see the significance of steps which at the time seemed perhaps very minor. I would say that one of the first steps that was important was the creation by the Board of the special study committee appointed by the Board I believe in 1962. The deliberations of that committee, the involvement of the citizenry, the recommendations made by it was an important step to sharpen the focus of the understand-

ing of the school district of the problem. Following upon that, and certain limited steps taken by the Board in response to that report, I think the creation of the advisory council was a continuing effort to improve the quality of insight which the Board of Education had with respect to these questions. Now specifically in my view, one of the most significant steps that the Board took as a result of this important study that it was engaged in was the policy which had been previously testified by Mrs. Noel which precluded additional school construction in northeast Denver. This was important because it stated as a matter of public policy of this community that we would not create additional capacity in that [67] area with the increasing racial segregation of the neighborhood for increased segregated education.

Q. In Smiley Junior High School itself, by November 21st, 1968, state if you recall the approximate racial composition. A. I would think it would have been approximately 70 percent Black and perhaps four or five percent Hispano. The balance would have been Anglo.

Q. So that in spite of the continuing concern of the Board and the citizenry over the years described, Smiley had still become substantially segregated? A. That's correct. The Boards had really been as I have indicated in the form of continuing study, continuing education, continuing information rather than specific concrete tangible steps that would lead to an alleviation of the condition.

Q. And your suggestion of November 21st was a specific tangible step to alleviate that condition? A. That's correct.

Q. Following the receipt of your suggestion by the superintendent, what were the next steps taken by the district and the superintendent concerning Smiley Junior High School? A. It was my understanding that Dr. Gilberts

and his staff were engaged in a careful evaluation; not just of the suggestion I had made for his consideration, but of other [68] alternatives that would achieve substantially the same result; namely, the reduction of the pupil population at Smiley and the alleviation of the adverse racial balance in the school. And that during the period from November 21 through the month of December, Dr. Gilberts and his staff were engaged in this investigation and this study.

Q. And did this study result in recommendations to the Board? A. Yes.

Q. Mr. Benton, I hand you what have been marked as Plaintiff's Exhibits 3, 4-A, 4, 5, and 5-A and ask you if you can identify those.

The Court: He doesn't have to if they're already identified and admitted.

Mr. Barnes: They are admitted.

The Court: We don't have to do it again. That's the whole purpose of this preliminary identification; the agreement as to authenticity. If you want him to refer to any of them or testify from them, you may do that.

Do you have a question concerning those?

Mr. Barnes: Yes, Your Honor. I'm just formulating my question.

Q. Mr. Benton, what was the first of these resolutions or—or these recommendations which was offered by the superintendent? [69] A. I believe resolution 1520, Plaintiff's Exhibit 3, would have been the first recommendation that the superintendent presented to the Board.

Q. And to what did that pertain? A. This pertained to certain secondary schools, notably East High School and

Smiley as a point of focus with incidental relationships to other schools.

Q. What was the action of the Board upon receipt of that recommendation? A. As was typical of the Board of Education during my tenure, the Board received these resolutions for consideration and evaluation and in connection with that the valuation I believe there were conferences held among members of the Board and the superintendent and the administrative staff in which the details of this resolution were considered and evaluated and my recollection is also that there were at least one—perhaps more—public meetings where the public had an opportunity to present its views with respect to these matters.

Q. Following the presentation that is contained in 1520, were there further presentations made to the Board concerning junior high schools and elementary schools? A. Yes, there were two other resolutions of importance here; one was resolution 1524 which I believe represented a further implementation of resolution 1520, and resolution [70] 1531 which related to certain elementary schools.

Q. Resolution 1524 was with regard to implementation in the junior high schools? A. That's correct.

Q. So that a discussion began beginning in January of 1969 concerning the contents of these resolutions presented by the superintendent. Can you tell the Court whether there were also public hearings concerning resolutions 1524 and 1531? A. There were public hearings relating to both of those as I recall. And I might add that I believe there was also consideration of perhaps of a highly general nature given to these matters during the month of December, 1968.

Q. Does 1524 contain a plan pertaining to Smiley Junior High School? A. It does.

Q. And does 1531 contain a plan pertaining to Barrett Elementary School? A. It does.

Q. In your judgment were these two schools the focus of these resolutions? A. Well, Smiley I think was the focal point at the secondary level because of the fact that Smiley had been a school of concern to the district and to the community for a number of years. The difficulties of maintaining and even [71] creating equality of educational opportunity there had not been resolved satisfactorily. Smiley, because of its profound impact upon the Park Hill area, which it serves, was important. It was important because it's one of the major contributing schools to East High School, which of course is important to the whole community so that Smiley because of its historical importance and its then importance in terms of its relationship to the high schools and to the residential areas of Park Hill, was the matter of principal concern in resolution 1524. This produces of course the junior high schools' problems; whether they are resolved or not, has an impact on the elementary schools. And in order to maintain the beneficial changes at Smiley Junior High School contemplated by resolution 1524, it was necessary to make certain adjustments at the elementary level so that schools—the elementary schools and Park Hill feeding into Smiley would bear an appropriate educational relationship to Smiley.

Q. One of these elementary schools was Barrett Elementary School? A. One of the schools was Barrett. And Barrett I believe was selected for inclusion, I think not originally recommended by Dr. Gilberts but subsequently included in his recommendation, the concern being that the profound impact of segregated schools in Denver was not only in Park Hill but also in the residential areas to the west of Park Hill and [72] that as a means within the

limits of physical and personal capability of drawing those schools into the comprehensive solution of segregated schooling in Denver, Barrett was included because it was geographically contiguous to the Park Hill area which was a matter of principal focus and it was a small school which did not pose the more serious problems of money and personnel that would have been perhaps involved if other larger schools had been included.

Q. Were Barrett and Smiley the only segregated schools in the system? A. No.

Q. So that this was not a plan involving all the segregated schools in the school district? A. Clearly not.

Q. Was it a drastic step forward in your judgment? A. It was not a drastic step forward. It was in the discussion relating to resolution 1531 that I urged that Gilpin School, which is located substantially further to the west of Barrett, in near the so-called Five Points Area of Denver—that that school be included because of its location in the heart of the ghetto, as it were. I felt that Dr. Gilberts' recommendation was not only not drastic but was not fully adequate to cope with the problem as it existed in the community.

Q. Now, were there supporting documents that the [73] superintendent presented which implemented or described the implementation of resolutions 1520, 1524 and 1531? A. My recollection is that there were such documents.

Q. And those are contained in Plaintiff's Exhibit 4-A and 5-A? A. That's correct.

Q. And the resolutions themselves are Plaintiff's Exhibits 3, 4 and 5? A. Correct.

Q. You have stated that there were public hearings. Can you give an idea of the scope of the contribution of the public to the Board's consideration? A. The public hear-

ings were held as has been customary in the school district each time a secondary school boundary is changed. This I understand to be the traditional practice of the district, going back many many years. And these hearings were ordered for that purpose to give the public an opportunity to respond so that there was an opportunity for any interested citizen to appear before the Board and present his views with respect to the wisdom or lack of wisdom involved in the adoption of the proposed boundary changes. It had not been customary in the school district as I understand it to have public hearings when elementary schools are bounds changed. These are ordinarily changed by [74] the superintendent as an administrative matter and do not require Board action and therefore the Board customarily has not had hearings. But, because of the particular public interest in this question and the notoriety that it had achieved in the community, it was determined that it would be appropriate to have a public hearing with respect to 1531 even though traditionally it would not have been indicated.

Q. Were such things as educational and psychological and economic factors considered and offered for consideration by the public? A. There was a broad variety of testimony as it were presented to the Board in these proceedings. Individual citizens spoke in their own behalf about the educational and the other significance of the Board's proposed action. There were representatives of groups including professional groups of doctors, psychiatrists, psychologists, social workers; the clergy was there and representatives of the Chamber of Commerce and all these groups were in strong support of the proposed action of the Board on the three items indicated.

Q. Were the resolutions eventually passed? A. The resolutions were eventually passed. I might say I did not create the impression in my testimony that there was no opposing testimony at these hearings. There were individuals who opposed the resolutions and there were also representatives for the most part of neighborhood organizations [75] from southeast and southwest Denver. But, the resolutions were adopted by the Board of Education in all three cases I believe by a vote of five to two.

Q. And were you voting with the majority? A. I was a member of the majority?

Q. What general objective was behind these resolutions with regard to Smiley and Barrett? A. The objective was the creation and maintenance of equal educational opportunity for the children involved. They were founded upon the superintendent's recommendations. They were based upon his professional judgment that they were reasonable. They were within the physical and administrative personnel capabilities of the district and they were designed to reduce the concentration of minority children in those schools so that the program could be improved and the quality of education could be raised.

Q. Would the racial composition of those schools have been changed? A. The racial composition of Barrett School would have been changed from approximately 100 percent Black to approximately 80 percent Anglo effective September, 1969, and at Smiley—I believe these figures are approximately correct—the racial balance would have changed from about 70 to 75 percent minority to approximately 70 to 75 percent Anglo, in September, 1969.

[76] Q. What was the general objective behind these resolutions with regard to East High School and Philips Elementary School and Park Hill School? A. Let me

speak first to Philips and Park Hill. Both of those schools were integrated schools. However, there were disturbing trends to the principals, to the faculty, to the citizenry that unless aggressive and thoughtful action was taken by the school district that they would become perhaps at a slower rate but nevertheless they would become segregated schools. So the purpose of the resolution with respect to those two schools was to insure the maintenance of the integrated education where it existed, this being consistent with one of the principal elements of Dr. Gilberts' plan to be presented to the Board, that is to say, the stabilization of neighborhoods through the maintenance of integrated education where it existed. Now, East High School came to be a critical point of focus for the Board of Education because of its realization that East was becoming Black in its pupil composition by significant percentages each year and that unless some intervention was made through Board policy and administrative practice, East High School reasonably could be predicted to become another Black high school in Denver. The Board concluded—the superintendent I believe concurred—that it was in the best educational interest of the students at East High School as well [77] as in the best interests of this community to not permit East High School to become a Black high school. Therefore, resolution 1520 as it related to East High School was proposed and adopted.

Q. Was the racial composition of these schools affected by these resolutions? A. Yes, I don't have the percentages in mind with respect to Park Hill and Philips, but the effect of the resolution would have been to reduce the number of Black children in both schools and to increase the number of Anglo. At East High School, which I believe presently is approximately 40 percent Black, there

would have been in September, 1969, a reduction of the Black population by significant amounts and then a progressive reduction of the Black population in succeeding years.

Q. What was the objective of the Board with regard to Stedman Elementary School? A. Stedman Elementary School I believe would have been affected by the resolution primarily through the elimination of certain mobile units and the transportation of children from Stedman to certain Anglo schools I believe primarily in southwest Denver. So the effect of the resolution I believe that Stedman would not have been to improve the racial balance particularly but to reduce the population at Stedman and I might say as I indicated earlier in my testimony [78] the schools directly affected by the resolutions were those that had been indicated. The incidental effect of this resolution if it were to be implemented would have been to have integrated a substantial number of additional schools in other parts of the city which are presently near 100 percent Anglo. In other words the schools would have had a significant minority population had the resolutions been carried out.

Q. What methods were employed by the Board to obtain these objectives? A. Primarily the modification of attendance area boundaries and the use of transportation, both long established administrative practices of the school district.

Q. Now, Mr. Benton, I direct your attention to Plaintiff's Exhibit C-3 and ask you to state whether the Board specifies their considerations and the conclusions with regard to educational purposes that were to be achieved by these resolutions? A. Yes, I would say this is reflected in the resolution. These resolutions were all based as I

understood it upon a careful and extensive professional evaluation of the educational problem and the educational solutions represented here and by a policy determination by the Board of Education that that professional judgment was competent. I think those considerations are reflected in the language of the resolution.

* * * * *

[79] * * *

Cross-Examination by Mr. Craig:

* * * * *

[81] Q. I believe you testified that there was a trend in some of these schools at least toward increasing segregation as you used the term? A. Yes.

Q. Was there also a parallel change in the racial composition of the neighborhoods of these schools at the same time? A. Yes, there was. There was a change in the neighborhood.

Q. So could we say that the result of the—or the [82] cause of the change in the composition of the schools was the result of the change in the neighborhood? A. Well it was a result of more than that. It was a result of rigid adherence to the so-called neighborhood school policy which precluded the policy of alleviating in the schools the impact of increasing segregation in the neighborhood. It wasn't just the increase of the neighborhood segregation that produced the results; it was the inability until resolutions 1520, -24 and -31 of the Board of Education to make a judgment that it would intervene in that process and cause it not to be inevitable but cause it to be amenable to education decisionmaking.

Q. Do you see as one of the purposes of these resolutions to the role of schools as an instrument in creating social change in the community? [83] A. I was momentarily distracted, Mr. Craig. Could you repeat the question?

Q. Do you see as one of the purposes of the resolution as it relates to the role of the school, as using the school as an instrument for social change in the community? A. Well, this question raises I think a very fundamental issue and that is what is the purpose of education. I take it that one of the essential purposes of education, public and private, is to have an impact upon humanity in the form of the individual who is involved in the formal process of education. So that what he learns or does not learn in school ought to have a significant bearing on what he does or does not do; what he thinks or does not think; what he believes or does not believe, as a citizen and as an adult. So that to create and maintain an effective program of education in the schools, so that true equality of educational opportunity exists for the development of the potential of all people who are subjected to the process of education, ought to have—must have a beneficial impact on the community; on society. If it doesn't have, then the game isn't worth the candle. And that we are engaged in a massive and irresponsible expenditure of public resources that perhaps could be better put elsewhere. So there is a distinct relationship between what you are able to do in the schools and what ultimately you are able to do with mankind. Now, I'm not sure that's responsive to your [84] question.

The Court: I'm not either.

The Witness: If not, I apologize.

The Court: Does that answer your question?

Mr. Craig: I'm not sure it is either, Your Honor, but I think it is—it has touched on it.

The Court: I gather from your question that you wanted him to say whether he views using schools as an instrument or weapon to bring about social change, generally. Is that what you asked him?

Mr. Craig: That's essentially what I asked him.

The Court: In other words, it is just part of an overall plan to change the system? Is that what you wanted him to answer?

Mr. Craig: Yes, Your Honor, that's essentially what I wanted to ask.

The Court: Did he answer that?

Did you answer that?

The Witness: I believe I did, Your Honor, but if additional comments are indicated, I'd be glad to—

The Court: I don't care.

The Witness: I'd be glad to accommodate the Court or counsel.

The Court: Maybe he wishes to ask another question.

Mr. Craig: I believe the witness' philosophy on that [85] was covered in the answer.

No further questions, Your Honor.

Redirect Examination by Mr. Barnes:

Q. Mr. Benton, is there any statement within the resolutions that we have been discussing, 1520, 1524 and 1531, which requires racial balance in the schools in the school district? A. I don't recall any such statements.

Q. Mr. Benton, you spoke in response to a question by Mr. Craig of the deterioration of the schools in northeast Denver. Was the Board aware of this deterioration? A. Yes, I think the Board was aware during this entire period from 1962 on, the fact that academic achievement was declining in some schools; was chronically low in others. I suppose it wasn't made as dramatically clear to the Board as perhaps—in the past as it was when Dr. Gilberts, upon assuming the superintendency, released the standard test scores on a school by school basis and this enabled not only the board but I think the community for the first time to

make a very clear judgment as to the deteriorating and chronically deteriorated quality of education in segregated schools.

Q. Is the neighborhood school policy the only method of assignment which can be used by a board of its students? [86] A. You mean in general terms?

Q. Yes. A. No, there have been many other policies that have been adopted by the School Board and implemented by them in other communities.

Q. Keeping in mind the awareness of the Board of the deterioration of the school we have been considering, what was the effect of the choice of their policy for the assignment of students? A. Well, this policy as I understood from Dr. Gilberts' recommendation was among alternatives perhaps that might have been selected.

Q. Let me clarify my question. What was the effect of the choice of the neighborhood school policy by the Board on the deterioration that you described? A. I'm sorry. Well, my view was that—and I think this was the view shared by the majority of the Board, by the members of the Board—that the adherence to the neighborhood school policy without modification and without any attempt to intervene in this process of changing neighborhood, therefore, impact upon the schools was to maintain and perpetuate the decline in education and the absence of true educational opportunity—equality of opportunities.

Q. Is there any statute requiring the Board to adopt the neighborhood school policy? [87] A. I'm aware of none.

Mr. Barnes: I have no further questions.

Mr. Craig: No further questions.

The Court: You may step down.

(Witness excused.)

The Court: We will take our noon recess now and resume at two o'clock.

(Whereupon, the trial recessed at 12:25 p.m. and resumed at 2:10 p.m.)

The Court: One of the spectators complained that nobody can hear. I think probably the public does have some interest in hearing what the witnesses say. We have never had any trouble with accoustics in this courtroom before. It's built as a soundproof room and I don't seé why we should have this difficulty here today. I think the lawyers ought to speak up and the witnesses. Now, if you have to get further back, why, do so. But, encourage them to raise their voices just a little bit. They don't have to yell but they can speak up, you know. Make themselves heard. Now, somebody filed a special motion to be heard. I think it ought to be made clear that this is no legislative body. It's not an administrative tribunal. We don't allow the citizenry to be lobbyists. We will not receive any petitions or letters. I would like to make that absolutely clear right here in the outset. We are seeking out the truth on the merits of this case and it's an [88] ordinary lawsuit in which we do it by adversary method. We don't allow the public to participate, nor the newspapers. We will do our very best to find the merits and then decide the case upon those merits. But, we're not going to hear from the public and I'm not going to receive any letters from anybody. My wife will intercept them at home and my secretary will intercept them here. They will not be read. If they contain any threats, of course, to the interference of the administration of justice, we will deal with them when the case is over.

Very well. Proceed.

Mr. Greiner: Before proceeding with calling our next witness which is Dr. Paul Klite, you will recall

that at the hearing on June 27 the Court asked counsel to submit proposed findings of facts and conclusions of law. We have prepared on behalf of Plaintiffs certain proposed findings of fact and I would like to submit them to the Court and opposing counsel at this time.

The Court: Very good.

Mr. Greiner: Our next witness will be Dr. Paul Klite.

Paul D. Klite, a witness called by and on behalf of Plaintiffs, having been first duly sworn was examined and testified as follows:

Direct Examination [89] *by Mr. Greiner:*

The Court: Give us your name and address, please.

The Witness: Paul D. Klite. My address is 1434 Birch Street.

The Court: How do you spell your last name?

The Witness: K-l-i-t-e.

By Mr. Greiner:

Q. Dr. Klite in order to assist Plaintiffs' counsel have you prepared certain exhibits for presentation in this case? A. Yes, I have.

Q. I'd like to first direct your attention to what's been marked as Plaintiffs' Exhibit 7. This is one of the exhibits, the authenticity of which is admitted. And I wonder if you would just briefly describe for us what Plaintiffs' Exhibit 7 and the overlays attached thereto illustrate with respect to the effect of these resolutions upon first of all the senior high schools. A. May I leave the witness box to show that?

Q. Yes.

The Court: Are the qualifications of the witness Klite admitted?

Mr. Greiner: Your Honor, he is not here as an expert witness and he is not going to render any expert testimony. He is simply going to state what the objective data, the numbers of students to be moved and the racial [90] compositions, and so forth.

A. This map which is a 1966 boundary map of the senior high schools shows three high schools affected by Resolution 1520; East, South and George Washington. The present boundaries and those which obtained until the time of the resolutions, are depicted in black on the map. The overlay, Exhibit 7A, shows the effective resolution 1520 on these three senior high schools. In red are depicted areas that had been within the East High district. This area would be moved to South. This area to the east would be moved to George Washington. In green, are two areas that had been part of the George Washington district. This would be moved to East and this to South. And in yellow is an area from South High School that would be moved to East High.

Q. Pardon me, Dr. Klite. With respect to the areas of red which were detached from as I understand it, East High School, can you tell us anything about the racial composition of those areas? A. Well, the predominant racial composition of both these areas is Negro. The predominant racial composition of the remaining three areas, that is, those detached from George Washington and South, are Anglo.

Q. So then the Blacks were being bused away from East and to predominantly Anglo schools? A. That's correct.

[91] Q. And certain Anglos at those schools were being bused back to East High? Is that correct? A. That's correct.

Q. Are the numbers of students involved reflected on the overlay? A. Yes, they are. In this area there are 141 students, and in this area 249. And in effect removing from East, approximately 390 students. To East, would come 195 students from George Washington and 172 students from South, a total of approximately 367 pupils. And then 100 switched to South from George Washington.

Q. Now while I still have you on your feet, Doctor, why don't we consider Exhibit 8 which I believe pertains to the junior high schools.

Dr. Klite calling your attention first to Exhibit 8, would you identify what is depicted on that exhibit? A. This is a 1967 boundary map of the junior high boundaries. In blue are listed the names of the schools affected by Resolution 1520 and 1524. Ten of the junior high schools are so affected. It looks like this is 11 of the junior high schools so affected. The first overlay shows the main thrust of Resolutions 1520 and 1524 as they pertain to junior high schools.

Q. That's Exhibit 8A? A. Yes, that's correct. In green are depicted areas [92] that will be detached from the Smiley Junior High School boundary and changed to be part of the boundaries of other junior high schools across the city. These are color coded on this overlay in green, indicating the schools to which these children will be transported. The numbers in each of these areas are indicated and a code letter for the receiving school. For example, in this area 200 children from Smiley will now be switched to Merrill. The other junior high schools also affected by this movement with the numbers of stu-

dents to be transported are listed. In yellow, is listed an area south of the present boundaries of Smiley Junior High School which is Colfax Avenue which will not become part of the Smiley Junior High School area. In red are depicted areas from Cole Junior High School that will be detached to other schools across the city. These are color coded in red. These students for example would go to Smiley. Thirty-three students to Byers and 110 students to Kunsmiller, 46 students to Kepner and 36 students to Rishel. There is one other aspect to the movement of students among the junior high schools and this is shown in the next overlay, Exhibit 8B. This shows the adjustment of population in two of the southeast Denver schools; 100 children presently assigned to Hill will now be switched to Hamilton and Thomas Jefferson. Similarly, 200 students from the Merrill area will be switched to Thomas Jefferson and Hamilton.

[93] Q. Those are provisions that pertain only to the sending of Anglo students to Anglo schools? A. That is correct.

Q. Then is there a similar exhibit prepared with respect to the effective Resolution 1531 on the elementary schools? A. Yes. This is Exhibit 9. Exhibit 9 is a 1967 boundary map of the elementary schools of Denver, Colorado and coded in yellow are the 17 elementary schools affected by Resolution 1531. The first overlay, Exhibit 9A, depicts the changes that were made at Barrett School. The area in green was in the Barrett boundary, was detached from the Barrett area and sent to five other predominantly Anglo schools across the city. This is depicted by the arrows showing students to Moore, 42; students to Montclair, 100; to Whiteman, to Carson, and to Ashley; a total of slightly more than 300 students than detached from

the Barrett area. Brought to the Barrett area was an area containing 225 students in the Lowry Air Force Base area who had been going to Montclair and Whiteman. They would now be assigned to the Barrett area and 42 students from Moore to Barrett, to balance the 42 from Barrett to Moore.

Q. So then there would have been two Anglos sending schools and the Anglos sent to Barrett would have been balanced by Negroes sent from Barrett into those other receiving schools? [94] A. Well, two sending areas; one, the Moore School area and the other, the Lowry Air Force Base area. Exhibit 9B shows a second aspect of Resolution 1531. This is the busing of students from Stedman Elementary School to three schools in southwest Denver, Force, Denison, and Schenck. They would receive 60, 30 and 30 pupils respectively.

Q. This is strictly one-way busing, is that correct? A. That's correct.

Q. No whites are being bused back instead? A. That's correct.

Q. Do you recall what the racial composition of Stedman was prior to these resolutions? A. Stedman is greater than 95 percent Negro.

Q. And after the resolutions the Negro racial composition changed? A. Not appreciably, no.

Q. So this was to relieve overcrowding? A. This was what the purpose of removing the four mobile units from Stedman. There are approximately 235 I believe or somewhere in that neighborhood students presently being bused from Stedman because of overcrowdness. This is an additional busing of 120 students from Stedman.

The next exhibit overlay 9C, shows additional aspects of Resolution 1531 pertaining to elementary schools. This

exhibit depicts the steps that are being taken to [95] stabilize the membership in the Park Hill and Philips Elementary School district. In Park Hill School for example, as depicted in yellow, 70 students will be detached from Park Hill area and put in the Steele attendance area. Thirty in this small yellow, spots to the Steck area.

Q. Those are Negro students? A. We don't know the exact racial or ethnic makeup of the students to be bused. For assumption purposes, however, these students have been considered to be Negro. A block by block census is not available to know the exact racial and ethnic membership of these students. In the Philips area depicted in red is an area to be detached to Palmer containing 50 students. In red here is an area detached to Ashley containing 30 students. Two other changes are in the Philips area, an area north of Colfax from Montclair is detached to Philips and an area in southeast Denver that had had children transported to Palmer is now moved to the Philips area to equalize the 50 students detached to Palmer.

Q. Thank you, Doctor. I think you can return to the witness box.

Dr. Klite, turning your attention first to the effect of these resolutions upon the senior high school schools which were depicted in Exhibit C, as I understood your testimony the principal high school to be affected was East High School? [96] A. East High School is the focus of the resolutions.

Q. Calling your attention to Plaintiffs' Exhibit 7C, does that exhibit reflect what the racial composition at East High School would be under Resolution 1520? A. That is correct. It shows that East High School would have approximately 25 percent Negro population under Resolution 1520.

Q. Now turning your attention to what's been marked for identification as Plaintiffs' Exhibit 7D does that exhibit purport to reflect what the racial composition of East High will be under the recision of 1520? A. Yes, it does.

Mr. Greiner: Your Honor, this was one of the exhibits I believe which counsel had some question concerning.

Would you wish to examine on voir dire or I can establish a foundation for it.

Mr, Creighton: I think if you will let me ask a couple of questions, you will understand our problem with this.

Mr. Greiner: I know what your problem is.

Voir Dire Examination by Mr. Creighton:

Q. Mr. Klite, what figures do you—how do you arrive at your figures on what you call post recision proportion? A. Since there would be no boundary changes we have assumed that the racial and ethnic composition of those three [97] high schools would be what it was in 1968.

Q. So that when you say post recision or after recision, you're using last year's figures? A. That's correct.

Q. Are you taking into account the alternative planning the School District made under Resolution 1533? A. We have not until a few days ago had the figures of the numbers of students who had volunteered to be transported. Therefore those figures are not taken into account in these figures.

Mr. Creighton: Your Honor, so long as it's understood by the Court that post recision data here really represents last year's racial figures and proportions, this may go in.

Mr. Greiner: I think I might also—it might also save time, Your Honor, to note that this same factual premise is present with regard to Plaintiffs' exhibit 8D and 9E. And these then would be introduced with the same understanding.

Mr. Creighton: With that understanding they may be introduced, Your Honor.

The Court: Very well. What's the number of that one?

Mr. Greiner: 7D.

And then, there is 7C and then there is 8D and 9E, Your Honor.

[98] The Court: Very well. All of those three will be received.

(Whereupon, Plaintiffs' Exhibits 7C, 7D, 8D, and 9E were received in evidence.)

Direct Examination by Mr. Greiner (Continued):

Q. Calling your attention, Dr. Klite, to Plaintiffs' Exhibit 7D, that exhibit does purport to show what the racial composition of East High School will be is Resolution 1520 is rescinded? A. Yes.

Q. What is shown there? A. It shows that East High School will be 54 percent Anglo and 40 percent Negro with 7 percent Hispano.

Q. Do we have a large graph that depicts this change? A. Yes, we do. We prepared Exhibit 7E which demonstrates with a two color code the percent Negro and Hispano population of the three subject high schools. In red under Resolution 1520; in yellow after recision of that resolution. It shows that the Negro population, Negro and Hispano population of East High School is above 40 per-

cent if the resolution is rescinded and it is close to 30 percent in 1969 with implementation of the resolution. I might add that the school district projects that by 1971 the percent of Negro and Hispano of East High School will be about 25 percent.

[99] Dr. Klite, this then was one of the stabilizing moves as described by Mr. Benton in his testimony this morning? A. Yes, it was and I think that can best be demonstrated with Table Exhibit 7F which shows the percent Anglo enrollment at the three subject senior high schools from 1963 to 1968. In 1963 East High School was 83 percent Anglo. It was in 1968 54 percent Anglo, showing a marked decrease in the number of Anglo students at that school. The racial and ethnic composition of the other two subject high schools was more stable.

Q. This then demonstrates that East High School is a school in transition?

Mr. Creighton: Objection, Your Honor. That's leading.

The Court: Sustained. I think we can draw that inference, anyway, from the facts.

Q. Calling your attention next, Dr. Klite, to the effect upon the junior high schools, as I recall Mr. Benton's testimony the primary focus here was on Smiley Junior High School? A. That is correct. Exhibit 8C shows the ten subject high schools estimated of ethnic and racial composition under Resolutions 1520 and 1524.

Q. What does it show then for Smiley Junior High School [100] under the resolutions? A. It shows Smiley to be 72 percent Anglo.

The Court: You're referring to 8C?

The Witness: 8C, yes, sir.

Q. At 72 percent Anglo and what percent Negro? A. Twenty-three percent Negro and five percent Hispano.

Q. Have you also prepared an exhibit Dr. Klite, that purports to project what the racial composition of Smiley Junior High School will be should these resolutions be rescinded? A. Exhibit 8D shows that without implementation of the Resolution 1520 and 24 as projected from the 1968 attendance, Smiley would be 24 percent Anglo and 72 percent Negro.

Q. So then the effect of the resolution in the recision would be just to completely reverse the racial composition that's at Smiley, is that correct? A. That's correct.

Q. Have you also prepared a bar chart, Doctor, that illustrates that change? A. Yes, Exhibit 8E, which again depicts the percent Negro and Hispano enrollment at the ten subject junior high schools. In red under implementation of Resolutions 1520 and 24 and in yellow without implementation of these resolutions. One can see that the declining order is the red bars. Cole [101] is affected in terms—essentially unaffected in terms of its percent Negro and Hispano by the resolutions. Smiley is the school with the most dramatic effect decreasing, as has been pointed out, the Negro population from 72 to approximately 25 percent. The other subject high schools—junior high schools of the city would increase their Negro and Hispano population under these resolutions by the busing from Smiley and Cole.

Q. Doctor, have you also prepared an exhibit that shows the changes in racial composition of the subject junior high schools over the years? A. Yes, Exhibit 8H for the ten subject junior high schools shows the percentage Anglo enrollment from 1963 to 1968. It shows that Smiley was 46 percent Anglo in 1963. By 1968 it was 24 percent Anglo.

Cole Junior High was ten percent Anglo in 1963 and four percent Anglo in 1968. The other junior high schools have shown quite stable percentage of Anglo over the period of six years from which data is available.

Q. Doctor, turning your attention next to the impact of Resolution 1531 upon the subject elementary schools, have you prepared any exhibits that depict the racial composition of those elementary schools under Resolution 1531? A. Exhibit 9D lists the number and percent Anglo and Negro and Hispano enrollment for the 17 subject junior high [102] schools. And it shows that under Resolution—

Q. Pardon me. Did you say junior high? A. —subject elementary schools. Excuse me. Under the Resolution 1531 each of these schools with the exception of Stedman would have between 70 and 85 percent Anglo enrollment. Stedman would have five percent Anglo enrollment. Stedman, you recall, is the school from which Negro schools were bused from—

Q. That's one-way busing for overcrowding? A. Yes.

Q. Doctor, as I recall Mr. Benton's testimony, it was the primary focus of 1531—that was up on Barrett. Could you tell us what the racial composition of Barrett would be under Resolution 1531? A. Barrett would be 73 percent Anglo, 24 percent Negro, and three percent Hispano.

Q. Now Mr. Benton also testified that there was to be some stabilization at two of the other elementary schools. Could you identify those for us? A. Park Hill and Stedman in turn under the resolutions—Park Hill would be 79 percent Anglo and Philips 70 percent Anglo.

Q. Doctor, you also prepared an exhibit which purports to depict the effect of the resolutions upon the racial composition of the subject elementary schools? [103] A. Yes, Exhibit 9E which shows that Barrett would

have zero percent Anglo and 97 percent Negro population; that Philips would have 55 percent Anglo enrollment instead of the 70 percent under the resolution; that Park Hill would have 71 percent Anglo instead of 79 as under the resolutions, and that the—among the other subject schools, there would be either ten or 11 that would have greater than 85 percent Anglo enrollment.

Q. Now, Doctor, have you also similarly prepared an exhibit depicting the differences before and after the resolutions at the subject schools? A. Yes, Exhibit 9F which shows the percent Negro and Hispano enrollment at the subject elementary schools under Resolution 1531 and after recision. Stedman not being appreciably affected by these facts, the major effect being at Barrett School which would change from a 70 percent Anglo school to a zero percent Anglo school and Philips which would change from a 30 percent Anglo school—correction—30 percent minority school to a 45 percent minority school. Park Hill would change from approximately 20 percent Negro and Hispano to a little more than 30 percent Negro and Hispano. The other schools averages are listed in the last column.

Q. Then finally, Doctor, calling your attention to Plaintiffs' Exhibits 97 and 98, have you also had occasion [104] to prepare a composite table showing certain data for all of the schools of the school district? A. Yes.

Q. Of what was the source of the data? A. Are you referring to these two exhibits?

Q. Yes. A. These are copies of the estimated ethnic distribution of pupils for all of the schools in the school system that has been issued each year by the school system since 1963.

Q. So these then are tables that have been prepared by the school district? A. That is correct.

Mr. Greiner: Do you have any objection?

Mr. Creighton: No objection.

The Court: What are the exhibit numbers?

Mr. Greiner: That's 97 and 98, Your Honor.

The Court: They will be received.

(Whereupon, Plaintiffs' Exhibits 97 and 98 were received in evidence.)

Q. And then, finally, Dr. Klite, have you also prepared a table that shows the change of the ethnic composition of the subject elementary schools over the years with respect to their racial composition? A. Exhibit 9I depicts the racial and ethnic composition [105] of the 17 subject elementary schools from 1963 to 1968. It shows that Barrett School was two percent Anglo in 1963 and in 1968 it was zero percent Anglo. Under Resolution 1531 it would be 73 percent Anglo. It also shows that Stedman was a predominantly Negro and Hispano school in 1963 and has remained so. It also shows that the Anglo population of Park Hill and Philips, which was 98 and 97 percent, respectively, in 1963, has decreased to 71 percent for Park Hill and 55 percent for Philips by 1968. The other schools are relatively stable on this chart.

Mr. Greiner: We have no further questions of the witness, Your Honor.

And for the record, we do offer each of these exhibits, which I understand have been received.

The Court: They are all received.

Mr. Creighton: I wonder, Mr. Greiner, if you could just list the exhibits you have just offered for the record and for my notes.

Mr. Greiner: Yes. The exhibits are the following: 7, 7A, C, D, E, and F; 8, 8A, B, C, D, E and H; 9, A, B, C, D, E, F and I; and 97 and 98.

(Whereupon, Plaintiffs' Exhibits 7, 7A, 7C, 7D, 7E, 7F, 8, 8A, 8B, 8C, 8D, 8E, 8H, 9, 9A, 9B, 9C, 9D, 9E, 9F, 9I, 97 and 98 were received in evidence.)

[106] *Cross-Examination by Mr. Creighton:*

Q. Dr. Klite, when you were testifying as to racial composition from time to time, were your statements based exclusively on school district figures? A. That's correct.

Q. And as of what date were these school district figures when you were speaking to the racial compositions in the various schools at the time 1520, 24 and 31 were passed? A. The source data for the 1520, 24 and 31 comes from the resolutions themselves and from the review volume, XLIX, of April 1969 and the review volume which is called XLX, I think it should be fifty, for May of 1969, and supplemented by a special report with Assistant Superintendent Armstrong.

[107] Q. Do you know when you received that verbal report? A. That report was given to Dr. George Bardwell by Dr. Armstrong sometime within the last month.

Q. And you got it from Dr. Bardwell? A. Correct.

Q. Have you made any inquiry as to the certainty of these figures, or to put it another way, as to whether these were estimates and if so within what ranges they were estimates? A. I have used the school administration's figures. I have not inquired at length as to how they obtained the estimates.

Q. Are there mileage scales on your map, Dr. Clyde? A. That map has a scale of 2.7 inches equals 1 mile.

Q. You're looking at 9-C, are you not? A. That's right.

Q. Do all of the larger maps have that same scale? A. The three maps that have been introduced as Exhibits 7, 8 and 9 do, yes.

Q. Have you measured off—It could be done by anyone with a little patience, I think—but have you measured off mileages or distances in terms of miles as between any of the schools where you're drawing arrows here? [108] A. No, I have not.

Q. But it would be possible with a measuring device and a scale given to determine that from that document, would it not? A. An estimate of it, yes.

Q. Dr. Clyde, not only in the three specific exhibits we discussed with reference to the post-rescission ethnic data in which you said you recall that, that really was synonymous with last year's ethnic data, not only with respect to those three exhibits; but is it fair to say, Doctor, that whenever you have spoken this afternoon of post-rescission racial and ethnic data you're speaking of last school year's figures? A. That is correct. The changes that might occur within a given school year from population changes reflect the 1969 attendance. We have no way of knowing—I have no way of knowing at the present time.

Q. Did you make any inquiry into the school district's methodology in making its projections and determinations of these ethnic figures? A. Well, we assumed, for example, if I may give you an example—

Q. All right. What did you assume, Doctor? A. That every student detached from the Smiley area was Negro and that every student brought to the Smiley area [109] was Anglo. By making that assumption we came to the

same percentage figure that the school administration had figured and published in the review.

Q. And referring to your high school exhibit, and I won't unveil it for this colloquy, but you understand, Dr. Clyde, that it's only in the case of the high school students in the Harrington Elementary district area that busing is provided? A. Well, the review of May 1969 lists 875 pupils will be transported at the Senior high level. Now, 875 turned out to be the total number moved among those boundary changes.

Q. East High School boundary changes? A. Yes, sir. High school boundary changes. And, they're listed in the official publication of the Denver Public Schools as being transported. I believe we have a copy of that.

Mr. Greiner: We do have Exhibits 10 and 11, which are what he is referring to.

Mr. Creighton: Yes, let's put them in at this point, Mr. Greiner.

The Court: All right. They are received.

(Whereupon, Plaintiffs' Exhibits 10 and 11 were recived in evidence.)

Q. I call your attention to the gate-fold, I suppose [110] it's called, in Exhibit 10, under Senior High. It speaks of 141 pupils from areas which I earlier called the Harrington area busing to South. Is there any other busing mentioned in that explanation? A. Not in that explanation, but in the following months' explanation all of the students were listed as being transported.

Q. What is your understanding, Mr. Clyde, of the amount of busing provided in connection with the East High School aspect of 1520? A. Well, there are these two figures and I don't know which one is correct.

Mr. Creighton: You may examine.

Mr. Greiner: Your Honor, at this time we would go ahead and offer Plaintiffs' Exhibits 10 and 11 which have been authenticated by the defendant.

The Court: Do you have any objection to 10 and 11?

Mr. Creighton: No, as I indicated before, they may be admitted.

The Court: They will be received.

Redirect Examination by Mr. Greiner:

Q. Did you state, Doctor, that under a projection by the School District as to what the expected racial [111] composition of Smiley would be? A. Yes, I did.

Q. And that was for what year? A. It's published in the review. I don't recall whether it was 1969 or '71 or both. If I could see a copy of that exhibit I could tell you. The estimate for 19—for September 1969 is 72 percent Anglo; 23 percent Negro; and 5 percent Hispano.

Q. Now, you have also I think referred to a projection by the School District with respect to East High School that is not reflected in these exhibits. A. Yes.

Q. What was the result of that projection? A. Their estimate for East in the Exhibit 10 is 68 percent Anglo in 1969 and 88 percent Anglo in 1971. This later figure was in error and is corrected in Plaintiffs' Exhibit 11 which shows the 1971 racial composition at East to be estimated at 73 percent Anglo.

Q. Now in reference to the question raised on cross-examination, Doctor, about the post-rescission figures, with respect to the trend in the racial compositions at these neighborhoods which have been reflected in the exhibits, what is the trend in these areas?

Mr. Creighton: Objection, Your Honor. There has been no trend reflected in the exhibits or other testimony.

[112] Mr. Greiner: I beg to differ. We have got three exhibits, Your Honor, that show from 1963 to 1968 exactly what that trend was.

The Court: Well, he may testify—

Mr. Creighton: That was in schools. I thought your question was residential.

Mr. Greiner: I'll change my question to schools.

Q. What is the trend in the schools, Doctor? A. The trend at East High School, Smiley Junior High School, Philips Elementary, Park Hill Elementary, has been towards increasing Negro population. Barrett Elementary is already a zero percent Anglo and can't get any lower.

Q. Now taking into consideration that trend, Doctor, was that trend reflected in the post-rescission figures that are reflected in these exhibits? A. No, they were not.

Q. And in fact we have gone back to September of 1968? A. That is correct.

Q. Considering the trend in those schools, Doctor, does the September 1968 data tend to understate the Negro compensation in these schools after rescission? A. It very well might.

[113] • • •

James D. Voorhees, Jr., a witness called by and on behalf of plaintiffs, having been first duly sworn, was examined and testified as follows:

James D. Voorhees, Jr.—for Plaintiffs—Direct

Direct Examination by Mr. Barnes:

The Court: Give us your name and address.

The Witness: James D. Voorhees, Jr, 170 Downing Street, Denver, Colorado.

By Mr. Barnes:

Q. Mr. Voorhees, are you presently a member of the Board of Education and a defendant in this case? A. I am.

Q. When did you first come on the Board of Education? A. After the election in May of 1965.

Q. Prior to that time did you serve in any capacity for the Board of Education? A. I was on and for a time was chairman of a special study committee investigating quality of education opportunity in public schools.

Q. And that's the report of that special study [114] Committee—that's what has been identified as Plaintiffs' Exhibit 20 in this cause, I think. Is that this report? A. Yes, it is.

Q. Mr. Voorhees, have you had a change in position with regard to the question of equal education opportunity in segregated schools? A. Yes, I believe I have had such a change.

Q. And has this evolution occurred during the time you were on the Board? A. Yes, it has.

Q. Were you one of the members on the Board who voted in favor of the integration resolutions which are the subject of this discussion? A. I was.

Q. And does your position represent where you changed to in this evolution? Does your vote represent where you changed to in this evolution? A. Yes, I think that would be a fair statement.

Q. What is your position with regard to the availability of equal educational opportunity in segregated schools? A. I think that based upon what I have observed and found out the probabilities of equal opportunity are reduced and may be entirely eliminated in racially or ethnically segregated schools.

[115] Q. What were the factors that led to your coming to that conclusion? A. Well, at some point, and I couldn't pinpoint it exactly, it became apparent to me that something was wrong in the manner in which the educational establishment was treating, and the result that it was getting from this group of children that we are now talking about, and I would include as well the children who might be considered as the product of a subculture of poverty, as you know there is an incidence of, between poor and minority children.

At some point it became quite apparent to me that the results that were available in terms of achievement and pure education, I suppose, to these children were not the same results that were available to the children of the Anglo—primarily Anglo and middle class which makes up the great majority, of course, of the students in the school.

I suppose what crystallized this change more than anything was the release by the Superintendent sometime last fall, I believe, of some test scores—comparative test scores which indicated to me a direct correlation between concentration of poor children, minority children, and low achievement as compared to other schools where these conditions were not present.

Q. Mr. Voorhees, I hand to you Plaintiffs' Exhibit [116] 83, which I believe has already been stipulated to as to its authenticity and admitted, and ask you if that is a sample of the kind of compilation concerning achievement test scores to which you refer? A. It is.

Q. Mr. Voorhees, is the composition of the School Board the same today as it was at the time the integration resolutions were passed? A. No, it is not.

Q. What brought about that change? A. An election held on May 22nd of this year which resulted in two new members, Mr. Southworth and Mr. Perrill, being elected to the Board.

Q. Might that have been May 20? A. May 20. Excuse me.

Q. In your judgment what were the focal subjects at issue in the campaign?

The Court: Oh, brother.

Do you object to that question?

Mr. Craig: Yes, I do, Your Honor. I don't think this is a proper question to ask of a lay witness.

The Court: Sustained.

Q. Following the election, did the School Board hold conferences with regard to actions on these resolutions? A. It held at least one at which I was present and [117] I think it may have held another one in which I was present. My calendar shows two such conferences. And then there was a third conference which—at which I was not present.

Q. Was there any in-depth discussion of the educational benefits of these resolutions at the conferences you attended? A. No, there was not.

Q. Was there any in-depth discussion of the educational benefits that would accrue from the rescission of these resolutions? A. No, there was not.

Q. Did the Superintendent take a stand with regard to the rescission of these resolutions? A. It is my recollection that he indicated that he would not be in favor of

such rescission; that he did feel they were sound and educationally—that the resolution were sound and were educationally viable and were a step forward in solving some of the needs of this district.

Q. What was the reason that was given for the rescission of these resolution? A. As I remember, the then majority, the new majority of the Board indicated that they had received a mandate from the voters of the people of the City and County of the school district, to rescind. They also indicated that rescission was necessary in order to restore [118] the confidence of the people of Denver in the School Board so that the bond issue could be passed.

Q. Did the Board then meet on June 9, 1969, and take action with regard to the integration resolution? A. Yes, it did.

Q. What did it do? A. It rescinded the three resolutions, 1520, 1524 and 1531.

Q. Did it do that by motion or by resolution? A. It did that by motion and resolution on each separate resolution.

Q. Was a subsequent resolution then offered? A. Yes. I think there were several that won a substitute resolution identified as 1533 was offered. And then it seems to me there were two or three others having to do with voluntary programs and individual schools.

Q. I hand you what has been marked as Plaintiffs' Exhibit 6A and ask you if that is the Resolution 1533? A. It appears to be it.

Mr. Barnes: This has also been stipulated to as to its authenticity, Your Honor.

The Court: Very well.

(Whereupon, Plaintiffs' Exhibit 6A was received in evidence.)

Q. Were you one of the ones who voted against the [119] passage of Resolution 1533? A. Yes.

Q. What was the vote on that resolution? A. It was four in favor and three against.

Q. The Court has heard previous testimony concerning the passage of 1490, Mr. Voorhees, I think, before you were here. Are you familiar with that resolution? A. Yes.

Q. How did you vote on that resolution? A. I voted for that resolution.

Q. Does Resolution 1533 act, in your judgment, to accomplish the aducational objectives of Resolution 1490? A. I can't see how it does, no.

Q. Mr. Voorhees, have you filed an answer to this cause? A. Well, yes, Mrs. Noel and Dr. Amesse and I filed an answer today.

Q. For the purpose simply of identifying to the Court the position taken to that answer, can you state what your prayer is? A. Our prayer as to the first count is that the relief requested be granted. Our prayer as to the second count—

Q. Just as to the first count is all. That will do.

[120] Mr. Barnes: Your Honor, Plaintiffs' Exhibit 6 is on the—is the official publication of the Board and the minutes of the meeting of June 9, 1969, and it has been admitted as to its authenticity. We would like to offer it at this time.

The Court: Do you have any objection?

Mr. Craig: May I examine that exhibit?

The Court: Surely.

Mr. Craig: No objection, Your Honor.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 6 was received in evidence.)

Q. Mr. Voorhees, was the content of Resolution 1533 discussed in conferences prior to June 9, 1969? A. Not at any conference at which I was present.

Q. When was the first occasion that you saw Resolution 1533? A. It was at our places in the form in which it was enacted when the meeting opened.

Q. Were there subsequently public hearings to discuss the content of that resolution? A. No, except at Board meetings. It was a public meeting.

Q. Were there statements at the Board meeting concerning the resolution? [121] A. By Board members. I have a recollection which the minutes would perhaps confirm that a request was made that persons present be permitted to discuss it before it was voted on, and it's my recollection that that was not permitted.

Q. Approximately how many people testified at that time concerning this resolution? A. From the public? I don't believe any public presentation was made before the motion was called for a vote.

Mr. Barnes: No further question of this witness, Your Honor.

Mr. Craig: Your Honor, may I suggest we have about ten minutes' recess at this time to check our cross-examination?

The Court: Very well. Let me know when you're ready, Mr. Craig.

(Whereupon, the trial recessed at 3:10 p.m. and resumed at 3:27 p.m.)

Mr. Craig: Your Honor, we have no questions of the witness.

Mr. Barnes: I would like to direct one more question to the witness, if I may.

The Court: You may.

By Mr. Barnes:

Q. Mr. Voorhees, I believe you [122] testified earlier about your opinion as to the effectiveness of Resolution 1533 to achieve the intended results of Resolution 1490. Would you state, please, why you think Resolution 1533 is inadequate to achieve the goals of 1490? A. Well, basically because it is a voluntary proposal, and it seemed to me that the possibilities of achieving any kind of stabilization, particularly in a school that is as troubled as Smiley, for example, or maybe East, maybe Barrett, or maybe any of those resegregated elementary schools of Park Hill on a voluntary basis was nil. I thought of that resolution as a sort of a sop to the community and I didn't think it would be effective even in that category.

Mr. Barnes: Thank you. I have no further questions of this witness, Your Honor.

The Court: Well, the thrust of it was to seek voluntary exchanges all the way along the line?

The Witness: Yes, Your Honor, that's about what it says.

The Court: But it said aside all of these boundary changes that had been adopted.

The Witness: They had already been set aside. This 1533, as I remember it, was in lieu of the

specific provisions of the three resolutions that are here in question.

The Court: I take it that it would depend upon [123] the ability of the administration to persuade students in these other elementary and junior high schools to transfer the minority—to the so-called minority schools?

The Witness: Yes, Your Honor. It would depend on that, which I think is an absolute impossibility, and I don't think people are going to volunteer individually to transfer their children—Anglo parents—to a school that is not going to be an integrated school when their child arrives. It would also, of course, have required the making of room in those schools by the transfer of minority children out of those schools, which is equally different on a voluntary basis.

The Court: Very well.

Mr. Barnes: We have no further questions.

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[124] * * *

GEORGE E. BARDWELL, a witness called on behalf of plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnes:

The Court: Please state your name and address so the reporter can hear it.

The Witness: George Bardwell, 2201 South Harrison, Denver, Colorado.

The Court: What is your occupation?

The Witness: I am a mathematician and statistician.

The Court: Where do you work?

The Witness: University of Denver, sir.

By Mr. Barnes:

Q. Dr. Bardwell, have you had [125] occasion to make a study of population movement and property values in the Park Hill area of Denver? A. Yes, I have.

Q. I show you what has been identified as Plaintiffs' Exhibit 38, and I don't think that's one of the ones to which the stipulation went.

Mr. Creighton: No, it was not. It was in your series submitted to us last night, but we have had a chance to look at this, Your Honor, and we have no objection to its going in.

The Court: May I see it, please.

This was prepared by the Community Relations Committee of the City and County of Denver?

The Witness: Yes, that's right, sir. I served as a consultant to the Commission on Community Relations.

The Court: You prepared it for that agency?

The Witness: I did.

The Court: And it's dated April 1966?

The Witness: That's right, sir.

Mr. Barnes: I am not going to ask him questions from this, Your Honor, but it indicates a study in the background—

The Court: You just want me to read it, is that right?

Mr. Barnes: It indicates a background knowledge [126] to which Dr. Bardwell will testify.

The Court: Maybe his testimony will spare me the burden of reading the whole thing, or, point up the highlights.

By Mr. Barnes:

Q. Dr. Bardwell, I hand you what has been identified as Plaintiffs' Exhibit 92 and ask you if you have had occasion to prepare a table which purports to show the assignment of probationary teachers and teachers with no previous Denver Public School experience, and teachers with ten or more years' Denver Public School experience as they relate to the subject elementary schools.

Mr. Creighton: What number was that, please?

Mr. Barnes: 92.

The Witness: Excuse me. It's of senior high schools.

The Court: This is the assignment of teachers with reference to their previous experience? Is that what you are talking about?

Mr. Barnes: Yes, Your Honor.

Q. What is the source of the information contained in this table? A. This table was compiled from a set of IBM printouts that were supplied to us by the Division of Personnel Services of the Denver Public Schools.

Q. What does the table purport to show? [127] A. Plaintiffs' Exhibit 92 shows the three senior high schools subject to Resolution 1520, East, George Washington, and South. It shows the percentage of the total teachers at those schools who have probationary status, no previous Denver Public Schools school experience, and the propor-

tion of teachers with ten or more years of Denver Public School experience.

* * * * *

[130] * * *

By Mr. Barnes:

Q. Dr. Bardwell, what does Exhibit 92 show with regard to the percent of probationary teachers at East High School, George Washington, and South? A. It shows in the year 1968 that the percentage of probationary teachers at East of 34 percent, which was double that at George Washington and also at South.

Q. Does it show with regard to the percent of those [131] teachers with no previous Denver Public Schools experience in those three schools? A. It shows a pattern very similar to that indicated for probationary teachers by which 17 percent of the 128 teachers at East had no previous Denver Public School experience, and that percentage is almost double that at George Washington and more than double that at South.

Q. Mr. Bardwell, I hand you what's been identified as Plaintiffs' Exhibit 93 and ask you what that purports to show. A. This exhibit is similar to the preceding exhibit showing probationary teachers as a percent of teachers with no previous Denver Public School experience—as a percent, and teachers with ten or more years' Denver Public School experience for the Junior High Schools under Resolutions 1520 and 1524.

Q. What is the source of the information of that data? A. The source for this is identical to that of the previous exhibit, a series of IBM tables, printouts, entitled, The Study of Years of Experience in Denver Public Schools, Contract Teachers, by School, Division of Personnel Services.

Mr. Barnes: I would like to offer Plaintiffs' Exhibit 93 into evidence.

Mr. Creighton: Same objection as to Number 92.

[132] The Court: The same ruling.

Q. Dr. Bardwell, what is the percent of probationary teachers that are at Cole Junior High School shown on your table? A. The percentage of probationary teachers is 66 percent.

Q. How does that compare with Hill Junior High School? A. Hill Junior High School has 34 percent probationary teachers. Therefore, by simple calculation, Cole has double the percentage of probationary teachers as does Hill.

Q. Nearly double? A. (No answer.)

Q. Turning your attention to Smiley Junior High School, what is the percent of probationary teachers shown there? A. Here, the figure is very similar to that at Cole in which 63 percent of the 98 teachers at Smiley are on probationary status, and that again is nearly double that at Hill.

Q. And are these disproportionate percentages consistent for those same schools for the columns you have listed for the previous teachers experience and teachers with ten years or more experience? [133] A. Yes, they are.

Q. For example, what does the table show with regard to the teachers of ten or more years experience at Hill and at Smiley Junior High School? A. Here, the comparison is even more dramatic. In the case of Smiley we have 7 percent of the teachers having 10 or more years of Denver Public School experience, while at Hill there are 36 percent. This means that there are about five times the percentage of experienced teachers at Hill than at Smiley.

Q. Dr. Bardwell, I hand you what has been identified as Plaintiffs' Exhibit 94 and ask you what that purports to show. A. This is a—is similar to the preceding two ex-

hibits, 92 and 93, showing the probationary teachers with no previous Denver Public School experience and teachers with ten or more years of Denver Public School experience; the experience expressed as a percent for those elementary schools that are affected by Resolution 1531 for 1968.

Q. What is the source of that exhibit? A. The source is identical to that of the preceding two exhibits, the IBM printouts which are a study of the years of experience of Denver Public School teachers.

Mr. Barnes: I offer Plaintiffs' Exhibit 94, Your Honor.

[134] Mr. Creighton: Same objection.

The Court: Overruled.

(Whereupon, Plaintiffs' Exhibits 92, 93 and 94 were received in evidence.)

Q. Dr. Bardwell, would you take that through the comparison by way of example of two schools on that table, Palmer and Philips, all the way through. A. Turning our attention first to Palmer, we have a total number of teachers of 16. The proportion or percentage of probationary teachers at Palmer is 13 percent. At Philips, we have 26 teachers. The proportion of probationary teachers at Philips is 58 percent. This means that at Palmer, compared to Philips, we have roughly four times the percentage of probationary teachers at Philips than we do at Palmer. For those teachers that have no previous Denver Public School experience, Palmer has 6 percent. Philips, on the other hand, has 27 percent, which means again that we have about 4 times the percentage of teachers at Philips that have no previous DPS experience as compared to that at Palmer.

Similarly, for those teachers who have ten or more years of experience at Palmer we have 75 percent of those teach-

ers in the so-called experienced group. On the other hand, at Philips we have 15 percent of those teachers of 10 or more years of Denver Public School experience. [135] Here, the comparison of the two percentages is 15 for Philips, and Palmer 75. Six times the percentage—excuse me, five times the percentage.

Q. Dr. Bardwell, I hand you what has been identified as Plaintiffs' Exhibit 96 and ask you what that purports to show. A. Exhibit 96 is a distribution by race and ethnicity of classroom teachers expressed as a percent for the elementary schools, junior high schools and senior high schools on September 23, 1968.

Q. What is the source of the information contained in that—what's the source of that table? A. The source of that table is a mimeographed handout given by the Division of Personnel Services of the Denver Public Schools.

* * * * *

[136] * * *

Q. Dr. Bardwell, turning your attention to the third page of Plaintiffs' Exhibit 96, what does that show with regard to the percent of Negro teachers in the school district in elementary schools? A. It shows that about 8.5 percent of elementary teachers are Negro.

Q. Turning your attention to Barrett School, what is the —what does the exhibit show to be the Negro percent of teachers in that school? A. At Barrett, 52.6 percent of the teachers are [137] Negro.

Q. As compared to an average distribution of 8.5 percent? A. As compared to an average distribution for all elementary schools in the district of 8.5 percent.

Q. What does the exhibit show with regard to Stedman School? A. With regard to Stedman, 21.1 percent of the teachers are Negro compared to 8.5 percent for the district as a whole.

Q. Dr. Bardwell, Plaintiffs' Exhibit No. 26 has already been offered and received, and I would like to show it to you, Dr. Bardwell. Will you look at it to refresh your memory as to what Plaintiffs' Exhibit 26 is. A. It's Denver Public Schools Policy, 1,617A, dealing with the change of assignment for employees. And the policies thereof.

Q. What does it show with regard to the control by the School District of Denver of teacher assignments? A. It shows here that a request for change of assignment cannot always be granted because the employee is not qualified for the existing vacancy nor the transfer from the present school or department would not serve the best interests of the program or district.

Q. What does it show with regard to the relevancy of [138] seniority in the assignment of teachers?

Mr. Creighton: Your Honor, if this witness is going to interpret policy, I will object. If he is going to read certain portions to highlight them, I suppose it is all right. Is this what you are doing?

Mr. Barnes: I'm not even going to ask him to read that; just state in general what the policy—

The Court: Well, he may answer.

Mr. Creighton: I object.

A. The policy of seniority with regard to this exhibit here is that seniority is a factor in transfer of a teacher and that that transfer should be taken—should take cognizance of the probationary status of a teacher in considering transfer.

Q. Dr. Bardwell, what does the policy 1617A show as to the possibility for changes in teacher assignment on the enrollment—when the enrollment of a school is changing? A. It permits a consideration of transfer of teachers, when

the enrollment — when there is a change of enrollment; where there may be a transition perhaps in the school itself.

Q. Dr. Bardwell, I direct your attention again to Plaintiffs' Exhibit 20 and ask you to look at page D13 and state what the finding reflected there is of the special [139] committee—what it was about, on the assignment of Negro teachers. A. The conclusion of the committee was that a large proportion of Negro teachers were assigned to schools that had a high proportion of Negro students.

Q. What did the study committee say with regard to the relevance of race in the assignment of teachers? A. They recommended to the Board of Education that—

Q. Before getting to the recommendation, Dr. Bardwell, if we could interrupt and direct your attention to page D13, next to the last paragraph, what was the finding concerning the relevance of race in the assignment of teachers?

Mr. Creighton: I'll object unless he reads the designated part.

The Court: All right.

Q. Would you read that paragraph? A. "As a result of its interviews the committee is convinced that race has been relevant in the assignment of teachers. It appears that the administration has been extremely reluctant to place Negro and Spanish American teachers in predominantly white schools because of concern with possible lack of acceptance on the part of a white neighborhood and a realistic assessment of the possible lack of support by some principals and faculties."

[140] Q. Dr. Bardwell, directing your attention to page D14—

The Court: I have received this material upon the theory that it supports your contention some-

what that the alleged segregated schools do not come up to standards and are inferior. We are not, I take it, in this suit concerned with the rights of teachers, are we?

Mr. Barnes: We are concerned with the acts of the School Board, Your Honor, which tend to—

The Court: We're not going to review every sin that they have committed, you know. I mean, we are concerned with a limited number of these alleged wrongs. That's all. And only as they pertain to your suit. I just don't think they should be used as an occasion to air every grievance that you have got. So, you are going to have to justify this teacher evidence somewhat, I think.

As I say, this is the question running through my mind, and—Is there some presumption or inference that standards of teachers are not up to standards, do you think? Do you maintain that?

Mr. Barnes: Not at all, Your Honor.

The Court: Why do you make such a point of that?

Mr. Barnes: It is our contention that the assignment of teachers is a conscious act taken by the School Board which in this case has resulted in concentration of teachers [141] by race and ethnicity which could not have been done accidentally and that this last exhibit that I have on this point—we can show that this condition existed.

The Court: Does it violate the rights of the plaintiff, you think?

Mr. Barnes: The intentional confirmation and solidifying of segregation in the schools, does, Your Honor.

The Court: That isn't what I asked you.

Mr. Barnes: If there is evidence that the School Board has acted and is acting to confirm the segregated character of a school by assigning Negro teachers to Negro schools, that is evidence of an intent which can give rise to an inference concerning their other action.

The Court: Very well.

Q. Dr. Bardwell, I hand you what has been identified as Plaintiffs' Exhibit 8G and ask you to state what that purports to show. A. This is a chart showing the concentration of Negro and Hispano teachers in the junior high schools subject to Resolution 1520 and 1524 in 1968.

Q. What is the source of the information contained in that table? A. The source of the information in this table is again the ethnic and racial distribution of classroom teachers from a handout by the Division of Personnel Services of the [142] Denver Public Schools.

Mr. Barnes: I offer the Exhibit 8G into evidence.

The Court: Do you have a copy of it?

Mr. Creighton: Yes, we were supplied copies last Saturday, and we spot checked these numbers and they appear to be in conformity with ours. I will have some comment on the form, but I have no objection to its admission.

The Court: The exhibit is received.

(Whereupon, Plaintiffs' Exhibit 8G was received in evidence.)

[143] Q. What does this table—what does this bar chart show with regard to the concentration of teachers at

Smiley Junior High School? A. It shows that in the case of Smiley and from reading the chart itself, it would appear that this is a bar of a height of 23 teachers while in the case of Cole there is 37 teachers. The remaining schools under the resolutions that are affected, Kepner, Kunsmiller, Hill, Grant, Merrill, Byers and Rishel, the corresponding numbers for these schools, Kepner, about 4; Kunsmiller, about 3; Hill, about 3; Grant, perhaps 2; Merrill, one; Byers, zero; Rishel, zero.

Q. What is the predominant racial concentration of Byers, Rishel, Merrill, Grant, Kunsmiller and Kepner? A. These are predominantly Anglo schools.

Mr. Barnes: Your Honor, I see that counsel for the defendants has a copy of Exhibit 8-G which was supplied to him on Saturday and which we found an error on. So I think he'd better see the original. It has a different figure with regard to the number of students in Smiley than the one we supplied him on Saturday.

Mr. Creighton: What is that figure?

Mr. Barnes: Dr. Bardwell testified it was about 23 teachers, I think.

The Witness: Yes, about 23.

Q. Dr. Bardwell, I hand you what's been identified as [144] Plaintiffs' Exhibit 8-F and ask you to state what that purports to show? A. This is a tabular distribution comparing the concentration of Negro and Hispano teachers in the junior high schools that are subject to Resolutions 1520 and 1524. It shows for each of the junior high schools, Byers, Cole, Grant, Hill and the rest, the percentage—the percent of Negro and Hispano students and simi-

larly the number of Negro and Hispano teachers. The percent of Negro and Hispano students is shown before and after the recission of Resolutions 1520 and 1524 and those figures are similar to the ones that were introduced in evidence before by Dr. Klite.

Q. What does it show with regard to the number of Negro and Hispano teachers in Smiley Junior High School? A. It shows that there are 23 of the total of 80 teachers for all these junior high schools are at Smiley, and 37—

Q. That's 80 Negro and Hispano teachers? A. Yes. Eighty Negro and Hispano teachers in these junior high schools that are subject to these resolutions. Twenty-three of these teachers are at Smiley. Thirty-seven at Cole. Which means that the proportion of Negro and Hispano teachers at Smiley and at Cole is about three-fourths or three out of four of the Negro and Hispano teachers in those ten junior high schools are located in Smith and Cole.

[145] Excuse me. Smiley and Cole. I'm sorry.

The Court: This is a total of how many?

The Witness: A total of Negro and Hispanos. A total of 80 Negro and Hispano teachers, and I might add to that, if I may, that—

The Court: Sixty of them are at these two schools? Right?

The Witness: Excuse me, sir?

The Court: Sixty of the 80 are at Smiley and Cole?

The Witness: That's right.

Mr. Barnes: I'd like to offer Plaintiffs' Exhibit 8-F into evidence.

Mr. Creighton: May I look at it?

The Court: That's what he has been testifying from?

Mr. Barnes: Your Honor, I forgot to offer it.

The Court: It becomes academic at this point.

Mr. Creighton: I want to record an objection to this exhibit and the explantion of it on the grounds of relevancy.

The Court: Where did these figures originate?

The Witness: Excuse me, sir?

The Court: Where did these figures originate?

The Witness: These originated from the Denver Public Schools, sir; from their published material from the Division of Personnel Services.

[146] The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 8-F was received in evidence.)

Q. Dr. Bardwell, I hand you Plaintiffs' Exhibit 94 and ask you to state what that purports to show?

The Court: Are you familiar with this one?

Mr. Creighton: I'm asking for it. This is one we were handed last night, probably.

The Witness: Excuse me, Mr. Barnes. It's 9-H.

Mr. Barnes: I beg your pardon. 9-H.

Mr. Creighton: We have had this one since Saturday. And, Your Honor, I want to make the same comment which we made as to the parallel one in the secondary schools—and my comment was that I recall it may be admitted.

The Court: Very well. It will be received.

(Whereupon, Plaintiffs' Exhibit 9-H was received in evidence.)

Q. Dr. Bardwell, what does this Exhibit 9-H show with regard to the concentration of Negro and Hispano teachers

in Stedman and Barrett Schools? A. This is a bar chart showing the concentration of Negro and Hispano teachers in the elementary schools subject to Resolution 1531 and for Stedman it shows by height on that particular bar of about 11 teachers at Stedman who are Negro and Hispano and about 10 teachers at Barrett who are Negro [147] and Hispano.

Q. What is the general racial composition of those two schools? A. These two schools are predominantly Negro.

Q. Dr. Bardwell, I offer you Plaintiffs' Exhibit 9-G and ask you to state what that purports to show? A. 9-G is a distribution—a tabular distribution of the number of Negro and Hispano teachers and students in the elementary schools that are affected by Resolution 1531. It shows a comparison of the number of Negro and Hispano teachers in each of those elementary schools as well as the percentage of Negro and Hispano students before and after the recision of Resolution 1531.

Q. What's the source of that information in that exhibit? A. Again, the source of the information for teachers is the estimated ethnic distribution of classroom teachers from the Division of Personnel Services in 1968.

Mr. Barnes: I offer Exhibit 9-G into evidence.

Mr. Creighton: Objection on the grounds of relevancy.

The Court: May I see it, please?

It will be received.

You are free to study it and cross-examine later, even, if you're not prepared. If you wish to attack these figures, I mean.

[148] Mr. Creighton: Thank you, Your Honor. I understand.

(Whereupon, Plaintiffs' Exhibit 9G was received in evidence.)

Q. Dr. Bardwell, what does this exhibit show with regard to the number of Negro and Hispano teachers in Barrett Elementary School? A. At Barrett there are 10 Negro and Hispano teachers.

Q. What does it show in regard to the Negro and Hispano teachers at Stedman Elementary School? A. In Stedman, there are 11.

Q. What is the total number of Negro and Hispano teachers in the subject schools? A. In the 16 subject schools, Montclair, and Montclair Annex have been combined in this table, there are 39 Negro and Hispano teachers. In Stedman and Barrett, 21 of these are concentrated, or over half of the Negro and Hispano teachers are located in the two schools, Stedman and Barrett, out of the total of 16 schools.

Q. What is the racial composition—what would be the racial composition of Barrett Elementary School if the recision were implemented? A. Barrett Elementary is 99.7 percent Negro and Hispano.

Q. What would it be under Resolution 1531? A. Twenty-seven percent.

[149] The Court: What kind of a grouping of elementary schools are you talking about here in Exhibit 9G?

The Witness: 9G?

The Court: Yes.

The Witness: Yes, in the case of Montclair and Montclair Annex, Montclair is a much larger school than the annex; around 660. In the case of Montclair Annex, it's about one hundred eighty.

The Court: But these are schools all of which are located in the northeast area or—

Mr. Barnes: They are the schools, Your Honor, which are affected by Resolution 1531.

The Court: They're all over town; southeast?

Mr. Barnes: That's correct.

The Court: And south central and north central? Very well.

Q. Dr. Bardwell, turning your attention now to Barrett Elementary School, when did that school open? A. Barrett Elementary School opened in 1960.

Q. Have you prepared a map which shows Barrett Elementary School? A. May I leave the stand?

Q. Yes. Would you leave the stand and show the Court the map? That is identified as Plaintiffs' Exhibit 40? A. Yes, this is Plaintiffs' Exhibit 40.

[150] Q. What is the source of the map? A. The source of the map is the 1960 boundary map of the elementary schools given to us by the Denver Public Schools.

Q. Now, have you drawn any extra lines on the map? A. Yes, we have. We have identified here two schools, the importance of which will come out in just a moment; Teller and Steck. This is City Park here. This is 26th Avenue. This is Colorado Boulevard in which there is a fairly heavy black line drawn through here.

Q. All of those lines are superimposed on the map, the source of which was what? A. The 1960 boundary map of the Denver Public Schools; elementary boundaries.

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[153] • • •

Q. Dr. Bardwell, where is the location of Barrett School on that map? A. Barrett School is located on the over-

lay which—in which this has been pasted to plastic and this is the location of Barrett School here. It abuts Colorado Boulevard. At least the playground abuts Colorado Boulevard, and this is 36th Avenue here.

Q. What is the boundary of Barrett School as shown? A. The Barrett School District?

The Court: The school was completed and opened in 1960?

The Witness: In 1960.

Mr. Barnes: The boundaries are shown on this—on this original map and we will have to offer that overlay in evidence.

[154] The Court: We will receive that, too.

Q. All right. You can use the overlay. You can take it out again.

What is the location of the school itself corresponding to the boundary drawn around the school as shown on that exhibit? A. The boundary of the school itself is indicated in red here. The boundary of the school district is indicated as the outline of the yellow portion and one will note here that the school's location reaches to the elementary boundaries themselves to the extreme eastern portion of that particular district. This being Colorado Boulevard right here.

Q. What is the underlying residential composition of that neighborhood as shown by the census tract information? A. In 1960, the year in which Barrett opened its doors to the children, the census tract, 36C, was shown to be 73 percent Negro. In census tract 36B, which contains the northern portion of Barrett Elementary School, the racial composition was 51 percent Negro. On the other

hand, across Colorado Boulevard, which is the dividing line here between these two portions, we see that, by taking the census material, the census statistics from the enumeration district, that the area shown in white was 6 percent Negro, just across from Colorado Boulevard. It might be worthwhile to point out here that Colorado Boulevard itself also extends [155] down through Teller and Steck. However, Colorado Boulevard goes down through the middle of Teller and it also goes down through —not quite the middle, but at least down through the middle portion of Steck itself.

Q. But Colorado Boulevard serves as a boundary between Barrett School and what other school located to the east? A. Stedman School would be located in this area here.

Q. And those are 1960 census tract figures? A. 1960 census tract figures. That's right, sir.

Mr. Barnes: This is Plaintiffs' Exhibit 40, Your Honor. If you want to look at it or I'll just give it to Mr. Kerr—

The Court: Very well.

Q. What was the capacity of Barrett School when it opened, Dr. Bardwell? A. The capacity of Barrett when it opened was 480, but this provided for two special education rooms of about 30 spaces. So this would make an effective capacity less special education of about 450.

Q. Is that a comparatively large or small school? A. It's a comparatively small school.

Q. What is the general size of land upon which the school—the school land upon which this school is built, if you know? A. I'd have to check out the size or the site for [156] this particular—

Q. Let me restate my question.

Does the smallness of site dictate the smallness of the school in this case? A. I wouldn't think so here because this site looks to be reasonably large.

Q. I'm talking about the actual site upon which the school is built; the playground site? A. Oh, the playground itself—I'm not certain whether or not this is compatible with the site size.

Q. Dr. Bardwell, turning your attention to Plaintiffs' Exhibit 42 which you have there and which we have another copy here, will you state what that purports to show? A. Yes. At the time that Barrett opened its doors in 1960, the percentage enrollment in Barrett was about 89.6 percent black or Negro. Stedman Elementary School, located on the eastern portion here of Colorado Boulevard in the white area, had a capacity of around 660 and it was over capacity by about 18 percent, having about 742 students in that year.

Q. Is that shown on the bar graph? A. And that information is depicted on the bar graph here in which we have indicated that Barrett School opened at 100 percent capacity. Stedman, however, was operating at about 118—120 percent over capacity.

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[158] * * *

Q. Do you have another comment, Dr. Bardwell? A. Yes, I would. I think it might be pointed out here, Your Honor, that in the case of Stedman School, which is located primarily in this area that is predominantly white, in comparison to the area over here which Barrett served, that Stedman in 1960 at the time Barrett opened its composition of enrollment was about 85 percent Anglo and

if one keeps in mind here that Barrett itself opened up at 90 percent or 89.6 percent black.

The Court: You already pointed that out, hadn't you?

Hasn't he already testified to this?

Mr. Barnes: We won't ask him to do it again, Your Honor.

The Court: Good.

By Mr. Barnes:

Q. Dr. Bardwell, turning your attention to Plaintiffs' Exhibit 50, I ask you to state what that purports to show? A. Yes, this exhibit has been prepared from the source maps of the Denver Public Schools representing this part of the City of Denver. This is the part of the so-called Park Hill section. This is Park Hill Elementary School boundary in 1961. This is Stedman Elementary School in 1961. This is Hallett. This is Smith. This is Ashley, Philips, Montclair and Montclair Annex, and Montclair being located [159] here. The annex is located over here. The shaded areas are optional areas as of 1961, and optional between Stedman and Park Hill. This shaded area here is located between Hallett and Philips—this was optional between Hallett and Philips, this shaded area here, which was an optional area between Montclair and the annex and—

Q. What is the source of that exhibit? A. The source of the exhibit except for the names which have been put on over here by ourselves is the 1961 boundary map of the Denver Public Schools.

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[162] * * *

Q. Mr. Bardwell, I direct your attention to Plaintiffs'

Exhibit 51, a bar graph, and ask you to state what that purports to show? A. This shows that for the schools, Stedman—and Stedman is located here—Smith, and Smith is located here, serving these boundaries; Hallett is here and corresponds to this right here; and Park Hill corresponds to this particular area. It shows that in 1961 Stedman was over capacity—or was over capacity by the following amount. Its capacity was 630 and the total enrollment at that time was 742 and computation shows that it was about 20 percent over capacity. Smith, on the other hand, in 1961 was under capacity. It had, for example, capacity of 960 with three special education units, and its enrollment however, was 909. In Hallett, it is almost at capacity. It has a capacity of 510 and an enrollment of 495, and this is about 99 percent capacity. On the other hand, in Park Hill we have here an enrollment of 709, a capacity of 660. It is in excess capacity of about 10 percent.

Q. What is the source of the information in that exhibit? A. The source of the information in this exhibit—[163] I'm sure I have it here—is the report, a study of pupil population, school boundaries, February 1962—excuse me—also pupil transportation, school buildings, Denver Public Schools, February, 1962.

Q. Published by— A. Published by the Denver Public Schools.

Mr. Barnes: I offer Plaintiffs' Exhibit 51 into evidence.

The Court: Do you object?

Mr. Creighton: That standing objection.

The Court: The objection will be overruled. It will be received.

(Whereupon, Plaintiffs' Exhibit 51 was received in evidence.)

George E. Bardwell—for Plaintiffs—Direct

Q. Dr. Bardwell, were there changes in boundaries proposed in 1961? A. Yes, there were. There were a number of boundary changes proposed in 1961 and this overlay—

Q. That is Plaintiffs' Exhibit 53? A. Plaintiffs' Exhibit 53. The boundary changes that were proposed by the Superintendent at that time and the source of the information that we have on this is the study report submitted to the Board at that time, indicated that the Superintendent proposed that this area here that is located just east of Park Hill Golf Course be removed from [164] Stedman and placed in Smith, that the area that is just west of Hallett shown here, which is now a part in 1961 of Stedman, be removed from Stedman and placed in Hallett. The optional area between Stedman and Park Hill, the Superintendent proposed that that be placed in Park Hill. The optional area between Hallett and Philips, it was suggested that that be placed in Philips.

The optional area here between Whiteman and Montclair was proposed—it was proposed that that be placed in Montclair. Similarly, the area just south of Park Hill which was in Park Hill at that time, it was proposed to put that into Palmer and the Albion School, which is a small school discontinued about 1962, it was proposed—that was phased out. But that that be attached to Park Hill.

Q. What's the source of that information? A. The source of that information comes about in two ways, the examination of the study report to the Board in 1962—

Q. Is that study report Plaintiffs' Exhibit 52? A. Yes, it is.

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[175] • • •

Mr. Barnes: We would like to recall to the stand Dr. George Bardwell.

George E. Bardwell—for Plaintiffs—Direct

DR. GEORGE BARDWELL, called as a witness by the plaintiffs, having been previously duly sworn, resumed the stand and further testified as follows:

Direct Examination by Mr. Barnes:

Q. Dr. Bardwell, you are going to need to testify from the chart. Doctor, have you prepared Exhibits 52, 53, 54, 51 and 56 and 55, 57 and 58? A. Yes, I have.

Q. Would you identify those exhibits and state the source of the information on each? A. Exhibit 50 is a 1961 boundary map of the Denver Public Schools for the areas shown. Exhibit 53 are the proposed boundary changes, February, 1962. These boundary changes are shown in yellow. Exhibit 51 is a capacity utilization bar chart. Exhibit 54 is a boundary map in 1962.

[176] The Court: What was 51 again? What did you call 51?

Q. What did you call 51? A. 51 is a bar chart showing capacity utilization of the four schools, Stedman, Smith, Hallett and Park Hill.

The Court: Derived from what source, he asked you?

The Witness: Yes, this capacity utilization chart has been derived from the source indicated here, "Report—A Study of Pupil Population, School Boundaries, Pupil Transportation, School Buildings, Denver Public Schools, February, 1962."

The Court: Go ahead.

The Witness: All right, you have 53, sir?

The Court: Yes.

Q. Exhibit 54 is a boundary map? A. Exhibit 54 is a boundary map of the 1962 boundaries of the same schools shown in the preceding exhibit, showing the effect of the boundary changes in 1962. Exhibit 56 is a capacity utilization bar chart showing the effect of the boundary changes in 1962, and Exhibit 58 is a graph showing the estimated Anglo enrollment.

The Court: Hold up, just a minute. I have to identify these in my notes or they don't mean a thing to me, so just slow down a little bit.

The Witness: Right, sir.

[177] The Court: 56 is a capacity utilization chart, showing the effect of 1962 boundary changes, right?

The Witness: Yes.

The Court: Is that correct?

The Witness: That's right, sir.

The Court: All right, let's go to the next one.

The Witness: And the source on 56 is again the report and recommendations to the Board of Education, School District No. 1, Denver, Colorado, by a special study committee on equal educational opportunity, and this is dated—this is an appendix to that report. Exhibit 58 is the estimated Anglo enrollment, 1962. It is a graph.

Q. The source for that? A. Yes.

Q. What is the source? A. And the source of this is reports of racial and ethnic distribution of students for the years 1963, 64, 65, and division of personnel services, Denver Public Schools, information for 1960 derived from U.S. Bureau of Census.

Q. Do you have 55? Have you identified that? A. There is no 55. Excuse me, 55 shows an overlay of the boundaries not changed in September, 1962. Exhibit 57 shows the Negro population in the Stedman school district by enumeration district in 1960.

Q. And enumeration district is a category of the U.S. [178] Census information? A. Yes, enumeration district is a small geographical area that the Bureau of the Census uses to control the census enumeration.

Mr. Barnes: I would like to offer Exhibits 53, 54, 51, 56, 55 and 57 and 58 into evidence.

Mr. Creighton: I think the Court knows our objection. The basis is remoteness and irrelevancy to all of these.

The Court: I take it your purpose in offering these is to show that in 1962 there was presented to the Board of Education a plan which would have to some degree reversed the trends which have been going on and that this plan was rejected? Is this what you are saying?

Mr. Barnes: That is it in part, Your Honor. We intend to show that the only portions of that plan which were not accepted were those which would have transferred black children into predominantly white schools, and those with regard to the Stedman school district, which was at that time the black school in that area.

The Court: What's your overall object? That's what I asked you. I think I understand what the graphs were seeking to illustrate. In relationship to the issues that we are trying, just so the record will be clear, what's your goal in offering these?

[179] Mr. Barnes: Your Honor, we are interested in showing a pattern of historic acts which lends meaning and substance to the rescission itself which are consistent with it and which will go circumstantially to show two things: One, intent on the part of the Board in rescission, and second, a net effect over the years intensifying and isolating segregation of schools in this part of town.

The Court: Well, Exhibits 50 through 58, noting the objection, will nevertheless be received, and this may prolong the trial, and if you have to respond to this material, why, if you hadn't anticipated it, why, this is a risk we will have to take, I guess.

(Whereupon, Plaintiffs' Exhibits 50 through 58 were received in evidence.)

Q. Doctor, would you comment on what those exhibits show, beginning chronologically? A. Yes, Exhibit 50, showing the original boundaries of the school district in 1961, the hatched area showing the optional areas between Stedman and Park Hill, between Hallett and Philips, between Montclair Annex and Whiteman. In 1962, Superintendent Oberholtzer made certain proposals before the School Board, which I indicated in yellow. It is interest to note that in each case of the proposed boundary change, these areas tended to be detached and indicated the direction in which they would become detached, all of these changes going [180] south and west in this direction.

Q. East, I think. A. What?

Q. South and east? A. South and east. At the time, in 1961, Stedman was overcrowded to the extent of 18 percent. Smith was undercrowded. It was below capacity.

Hallett was slightly below capacity and Park Hill was slightly over capacity. The Board adopted each of those changes except two in number—three in number. Those three that were not adopted bounded the elementary school district of Stedman, which at the time we had estimated on the basis of Exhibit 58 was between 35 and 50 Anglo. The effect of the Board's actions in making those boundary changes with respect to capacity are shown in Plaintiffs' Exhibit 56, in which we note that Stedman was still at the same—to the same extent over capacity before and after the boundary changes. Smith declined somewhat in actual utilization of its capacity, considerably below capacity at that point. Hallett was brought up to capacity and Park Hill enrollment then exceeded the capacity of the school.

To illustrate the distribution of the Negro population in Stedman, which is the school on which attention is focused, we see that by enumeration district, this being Stedman Elementary School District here, that there was a tendency by these boundary changes, or the lack of making [181] these boundary changes to aggravate and intensify the containment of the Negro population in Stedman at that time.

Here, by enumeration district, we find that the Black area is between 16 and 20 percent Negro. The surrounding areas that are hatched are between four and five percent Negro. The remaining part of this exhibit, the remaining school districts being clear, were less than three percent Negro in 1960.

Q. And the boundary changes which were effected pertain to those areas which were less than three percent. A. Yes, they do, sir.

George E. Bardwell—for Plaintiffs—Direct

Q. I believe you related yesterday the number of Negro students in Stedman in 1961. A. There is an estimate here in Stedman in 1961, an estimate here of between, oh, around 60 percent Anglo, which would make it about 40 percent Negro.

Q. Doctor, I hand you—I guess we will point out on the board—we need another board. Doctor, have you prepared Exhibits 70, 71, 72, 73, 76, 75 and—well, stopping at 75. A. Yes, I have.

Q. Would you identify those exhibits and the sources from which they are taken? A. Yes, Exhibit 70 is a map of the Park Hill schools being considered in 1963. This is an official boundary map [182] of the Denver Public Schools.

The Court: The year 1963, you say?

The Witness: Yes, sir.

The Court: Very well.

A. (Continued) Exhibit 71 is an overlay showing the boundary changes for those schools in 1964. Exhibit 72—the source on that, sir, is the 1964 boundary map of the Denver Public Schools. Exhibit 72 is an official boundary map of the schools in 1964 of the Denver Public Schools.

The Court: Hold up. Any members of the press have to sit outside of the rail. We reserve this space in here for the lawyers and for the principal witnesses. I don't know whether there is anybody here or not, but if there is, why, I will have to ask you to retire. Go ahead.

A. (Continued) Exhibit 72 is a portion of the official boundary map of the Denver Public Schools in 1964.

Exhibit 73 is an overlay which portrays by school year date the location of mobile units in the elementary schools. Exhibit 75 is a graph showing the Anglo enrollment in 1963 and 1964 on a percentage basis for the seven schools being considered. Exhibit 76 is an illustration of the 1964 changes and the corresponding estimates of the percentage Negro in those boundary changes, as well as the percentage Negro population in the elementary school district.

Q. What is the source of the census information on [183] Exhibit 76? A. The source of the census information on 76 is the 1966 census study that I prepared and by subtracting from the 1966 census figure information on length of residency, between two years and under, the figures were derived in each of the yellow areas as so indicated.

Q. Is there any other information on any of these exhibits which was not issued by the Denver Public Schools? A. All of the remaining information are official records of the Denver Public Schools.

Q. Doctor, I hand you Exhibit 101 and ask you to identify that. A. Yes, this is a tabulation entitled "Mobile Classrooms Costs", which indicates the date of purchase and location of the mobile units located in the Denver Public School district.

Q. Where did you obtain that document? A. This document was obtained from Dr. Armstrong's files several days ago. I personally took this out of his files and had it duplicated.

Mr. Barnes: We would like to offer Plaintiffs' Exhibits 70, 71, 72, 73, 75, 76 and 101.

Mr. Creighton: We make the objections to all of these on the grounds of relevancy, Your Honor, and

in addition, as to Plaintiffs' Exhibit 76, we object on the grounds [184] there has been no foundation laid to show the admissibility of the estimates and figures shown thereon.

The Court: Well, what do you propose to illustrate with this?

Mr. Barnes: Your Honor, this evidence is offered to show the concentration of Negro students as they increased in 1964 and 65 in mobile units in Stedman and Smith, Hallett, and to a lesser degree in Park Hill and Philips, and offer to show that the boundary changes intensified the segregation in Hallett and schools which became segregated in that year.

It also tends to show the general movement of boundaries continuous from the last series to the south and east in advance of the inward movement of the Negro population.

The Court: Well, there are no boundary changes depicted here, are there, in these exhibits?

Mr. Barnes: Yes, Your Honor, these are a series of boundary changes which occurred in 1964.

The Court: Oh, 71 show that?

Mr. Barnes: That's correct.

The Court: When did you see these?

Mr. Creighton: Excuse me, Your Honor?

The Court: When did you see them?

Mr. Creighton: When did I see these exhibits? We finally got them the night before this hearing commenced, [185] about 9:30.

Mr. Barnes: I think these were supplied to counsel Saturday, Your Honor.

Mr. Creighton: I beg your pardon. These were supplied last Saturday, and these were part of the series it had been suggested might not be used, but the fact is we have had them during that time and we object to them as to whether they fairly relate to the figures the school district possesses, and on that ground these are properly based on our figures, except for 76.

The Court: Are they going to prejudice you in the defense of your case?

Mr. Creighton: Your Honor, it simply expands the scope of this hearing back to actions taken by other boards in 1964 and 65 in this instance. I think I've explained we feel the narrow issue is what this School Board did this spring. No, I don't think it is going to prejudice us. It just means we have got perhaps more to deal with in this hearing.

The Court: Very well, they will be received.

(Whereupon, Plaintiffs' Exhibits 70, 71, 72, 73, 75, 76 and 101 were received in evidence.)

The Court: I think, though, we ought to make an inquiry about where we are going here. Have you changed your plans? Have you now decided to throw everything but the [186] kitchen sink into this hearing, or including the sink?

Mr. Barnes: No, Your Honor, there are 116 schools in the district and this evidence relates only to those schools which were involved in these resolutions and in the rescission and which the resegregation of which will be accomplished if the rescission is implemented.

There are examples of optional transfers and boundary changes and examples also of schools which are far more segregated than these, which we intend to offer in the main hearing. There is a great deal more, but in a hearing of this kind, when we need to prove intent circumstantially, it seems to us to be relevant to offer all that relates to these schools.

The Court: Then, you will complete your presentation as to the Park Hill School in this hearing, really?

Mr. Barnes: That's correct, Your Honor. We do not anticipate any substantial more degree of evidence about Park Hill. We have investigated that as well as we can with the possible exception of optional transfers, discriminatory transfers, from the Park Hill area, the evidence of which we haven't got complete at this time.

The Court: Very well.

Mr. Barnes: There may also be, I am reminded by counsel, some curriculum differences, but we don't know of those at this time.

[187] Q. Doctor, will you explain what the exhibits that you have on the board show? A. Yes, a number of observations flow from these exhibits. Beginning with the 1963 boundaries as they exist, we notice—

Mr. Creighton: Excuse me, Your Honor, the witness was asked what they show and not to make observations, and I believe he ought to understand that.

The Court: Well, I don't know whether he is responding or not so far. I can't tell. We will just have to test him out. Go ahead.

A. (Continued) These exhibits show, beginning with Plaintiffs' Exhibit 70, the original 1963 boundaries of the school district. In 1964, these boundary changes were proposed. It is noted here that in each instance each boundary change have a general direction of being detached in a school in a more northern part, the more westerly part, so that the general direction of the detachment is in a southeasterly direction.

If one compares the percentage Negro in Stedman, Hallett, Philips and Park Hill, it is noted that in each of the instances of the detachment that the percentage Negro is smaller than the actual area to which the boundary change was originally states in 1963. This is true for Stedman, in which Stedman is 43 percent. The area detached to Hallett is five [188] percent. And Hallett, the area is 25 percent as an entire area. It is 20 percent in population, the area that is detached. Similarly, for the optional area of Stedman, four percent to two percent and the same pattern reveals itself when we examine the collection of the boundary changes that were suggested in 1964. This was in response to the very massive movement of the Negro population into the Park Hill area from the period 1960-1966. The net consequence of this was that in each instance, Stedman, Smith, Hallett, Philips, Park Hill actually, and Montclair, the percentage Anglo enrollment declined from 1963 to 1964, and in fact in the case of Hallett dropped from 65 percent Anglo enrollment to around 40 percent by 1964.

The response then for this movement into the Park Hill area was the building of a substantial number—in fact, 28 of the mobile units out of the 29 in the school district at that time, were located in the Park Hill area, as shown in Exhibit 73. Here, we find that twelve units were placed in Smith, four units in Hallett, four in Park Hill, in 1965. In

the preceding year, four units were placed in Philips and four units were placed in Stedman, suggesting that the response here was—the response to this Negro movement in population was the concentration of the school population, further concentrated by the use of mobile units.

Q. Dr. Bardwell, I hand you what have been identified [189] as Plaintiffs' Exhibits 7-G, 9-J and 8-I, and ask you to identify those. A. 7-G is the graph of a segregation index for the senior high schools from 1963 to 1968, showing the effect of the rescission of Resolution 1520 on those senior high schools. Attached to that exhibit is an explanation of a mathematical foundation for the construction of this index. Exhibit 8-I is a similar graph for the junior high schools subjected to Resolutions 1520 and 1524, and 9-J is a similar photograph applicable to the elementary schools subject to Resolution 1531.

Q. What is the source of the figures or the information that went into the making of those graphs? A. The basic statistical information has been derived from the distribution of students by race and ethnicity, from the division of personnel services, in 1963 to 1968.

Mr. Barnes: I would like to offer Plaintiffs' Exhibit 7-G, 8-I and 9-J.

Mr. Creighton: If I may voir dire, it is just possible we will want these admitted ourselves, Your Honor.

Voir Dire Examination by Mr. Creighton:

Q. Dr. Bardwell, your explanation of your methodology is a two-page explanation, is it not, in mathematical terminology? [190] A. It is.

George E. Bardwell—for Plaintiffs—Voir Dire

Q. As a non-mathematician I'm trying to understand this. Do I understand, Dr. Bardwell, what you have done here is show in a graphic form the extent to which a school population departs in its ethnic proportions from an ideal school, or I should say a hypothetical school, which represents the ethnic proportions of the school district as a whole? Is that what it does? A. That's right, sir.

Q. What are those ethnic proportions of the school district as a whole which you used? A. Abstractly, and these are at each end of the spectrum in which a totally segregated school then would have an index of 100, a totally desegregated school would have an index of zero.

Q. Yes, but my question was, what was the hypothetical sub-district that this compared? A. In the case of a subgroup of schools that would have a segregation index of 100, let's say, this would mean that all of the students that were Anglo would be confined to a certain set of schools and all of the students that were minority, namely Negro and Hispano, would be confined to another set of schools.

Q. Dr. Bardwell, do I understand that you—you have [191] got to know your methodology and decide about this—did you start off with a hypothetical city-wide sub-district which—I'm using figures from my recollection—which would be something on the order of eight or ten percent Negro, ten or twelve percent Hispano, and the balance Anglo? Is that what you started with? A. Well, no, if we start here then with a segregation index of zero—

Q. What would that kind of school have? A. Then, this would constitute that abstract situation in which in each of the schools in a sub-district there would be the same proportion in those schools as would be reflected in the district as a whole. I might add that this is much like a cost of living index, in which one establishes the base, let's say, 1957

to 1959 prices. This is equal to 100, and one would like to know what departure from that particular index—whether or not prices decreased or increased. You have an objective way of comparing a very large mass of data, bringing it down into a single index, which provides a very convenience and very meaningful way of analyzing a very complicated concept like segregation.

Q. This may prove to be that kind of approach, but it is just not clear to me, Doctor. You speak of sub-schools, and I will take Exhibit 7-G, the one first mentioned. By sub-schools, you mean which? Senior high schools? [192] A. We mean in this case East, George Washington and South.

Q. Now, you have lumped them all together. A. As a group.

Q. And compared it with the School District No. 1 as a whole. A. That's right, sir.

Q. Do I understand you to say that these three schools lumped together depart from what you called the abstract sub-district on the order of 40 to 50 during the period involved? A. I will trust your reading of the graph on that. I assume, yes, that's right.

Q. And if the three school districts, sub-districts, lumped together, had exactly mirrored the ethnic ratios of the city as a whole, it would have been zero? A. That's right.

The Court: I don't think you ought to go into the merits of these on a voir dire examination. You are ascertaining method or testing, I suppose, the accuracy of the exhibit.

Mr. Creighton: Well, if we understand—

The Court: I mean, I do not think it is proper to cross-examine him on them on whether they are—

Mr. Creighton: Well, these have been offered, Your Honor, and—

[193] The Court: —at this time. Eventually, I suppose you will have a full opportunity to cross-examine every aspect of them, but this is preliminary examination to determine whether they are authentic, sufficiently so to justify their being received.

Mr. Creighton: Well, I'm going to object to the office of the exhibit on the grounds that it is not relevant to the issues in this hearing.

The Court: You think that further questioning will have brought about the results that you more or less held out to us that you agreed to their being received if you have some opportunity to question?

Mr. Creighton: Well, Your Honor—

The Court: Were you disappointed in his answers? It seems to me you agreed with everything he said.

Mr. Creighton: Well, if I may go a little bit further?

The Court: I just don't know what you had in mind.

Mr. Creighton: Well, I hope I can discover that the methodology here is such that we can agree that it shows fairly what is in issue in this hearing, and I am still inquiring about his methodology in producing this exhibit.

The Court: Well, go ahead then.

Q. Now, this relates only to school populations? [194] A. That's right. Populations, that's right.

Q. And the terminal here on each of these exhibits is 1968? A. That's right.

Q. What school year do you mean by that? A. That would be the school year 1968-69.

Q. This past year? A. That's right, sir.

Q. And 67 would be the year before that? A. That's right.

Q. And the data— A. Now these are the only data, of course, that are available on the school district, as you know, that gives a breakdown by race and ethnicity. In fact, the only figures available from the school district extend from 1963 to 1968, in which the year shown at the bottom refers to the school year beginning in September of that year. Presumably, it begins in September.

Q. I think I have only one more question. You have shown one part of your diagram here, rescission of resolution—I think it refers to 1520 in the case of Exhibit 7-G for 1968, which you tell us is last school year—Have you again assumed that next fall is going to have last year's racial composition under rescission of the resolution? A. I'm making the assumption here from the School [195] Board figures and the review of the composition and our own calculations from that.

Q. Well, you understand, Dr. Bardwell, that the school district has not projected the effects of the new plans? A. And the racial composition of each of these schools, the assumption being made had that plan been in effect in 1968-69 school year, this could be the effect on the segregation index for those sub-schools.

Q. Oh, you— A. Otherwise, it wouldn't—

Q. If 1520 had been in effect during the last school year, it would have produced the Black line, is that what you are saying? A. That's right.

Q. But, that's not what the school district's figures say. A. These are derived from directly those—

Q. Don't the school district's figures say that implementation of 1520 would result next year in certain estimated ethnic patterns? A. That's right.

Q. And I am just trying to establish what rescission of resolution is based upon, what assumptions? A. The rescission of the resolution is based upon the [196] ethnic and racial distribution of those students of each of the subschools under the resolution and the Black line which departs and shows the index of around 25 would be based on the assumption that in order to have a means of comparison the year 1968 was shown, what the effect of that resolution would be upon pupil membership.

Q. For last year or next year? A. For 1968-69. In other words, had the resolution itself been in effect.

Q. Last year? A. That's right.

Q. It would have produced the Black line? A. That's right. In other words, if we are to have a meaningful comparison on a time basis, instead of projecting the racial composition under the rescission of the resolution, the information is much more accurately reflected if we use the racial composition had those racial compositions been in effect during 1968-69, and what we are attempting to show here by this graph is a depiction of the magnitude of the effect of the rescission on comparable periods of school populations at a single point in time.

Q. What I'm trying to get you to admit, I think, Dr. Bardwell, is that you have applied 1520 to last year's school year rather than next year. A. Absolutely.

[197] Q. And when you say rescission of resolution, that's your way of showing last year's figures. A. That's right, last year's figures.

Mr. Creighton: All right. We have no objection.

The Court: Well, they will be received, 7-G, 8-I and 9-J.

(Whereupon, Plaintiffs' Exhibits 7-G, 8-I and 9-J were received in evidence.)

Direct Examination by Mr. Barnes (Continued):

Q. Would you explain what graph 7-G shows? A. What graph 7-G shows is a segregation index for the senior high schools which is fairly flat over the period 1963 to 1967, lying between about 45 and 50 percent, and in 1967 where we make the comparison for the resolution before and after rescission, that we show that we—on the basis of 1968 enrollment figures that the segregation index would be about 50, that the effect of the resolution on the segregation index is to decrease that index to a value of around 28.

Q. What does the exhibit show with regard to the changes which occurred in the segregation index in the years 1963 and following? A. Would you repeat the question?

[198] Q. What changes occurred, if any, in the years 1963 and following in the segregation index up to the point of implementation of the integration resolution? A. I think it is clear from the graph, Mr. Barnes, that this index shows that the degree of segregation for these particular schools remains fairly constant for the period 1963 to 1967, between a value of about 45 to 50.

Q. Handing you Exhibit 8-I, what does that show? A. This is a corresponding graph of the segregation index for the junior high schools that are affected by these two resolutions, and again in 1963 an approximate value for this index is around 63, and again it remains between the

value of around 63 to 70 over the period 1963 to 1967. Based upon the 1968 school enrollment figures and the distribution by race and ethnicity, we would have then a segregation index on that basis of around 63 to 64. The effect of the resolution is to decrease that index on the basis of that same year comparison to a value of around 35, so the degree of segregation compared to what we would have under the rescission of the resolutions around 65 would be decreased to about 35 under the resolution.

Q. Handing you Exhibit 9-J, what does that show? A. 9-J is a similar graph for the elementary schools, in which there have been, starting in 1963, a gradual trend from about 82 down to about 65 in 1967 of the segregation [199] index. In 1968, comparing the two values for the elementary schools under the resolutions, we would find that the 1968 enrollment would show an index of around 60. The effect of the resolutions would decrease this index to a value of about 43, so there have been a decline in that sense of about 17 percentage points in the segregation index under the resolutions, and this would give an approximate effect of desegregating, the desegregating effect of the resolutions for the elementary schools.

Q. Referring back to Exhibit 7-G, 8-I and 9-J together, do they reflect any other substantial desegregation of the impact equivalent to that achieved under the resolutions? A. No, they do not.

Q. Do these Exhibits 7-G, 8-I and 9-J pertain simply to the sub-schools under the resolutions? A. They do.

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[200] * * *

Cross-Examination by Mr. Creighton:

Q. Dr. Bardwell, I plan to go through several exhibits that you introduced more or less in the order that you introduced them. I would like first to discuss Exhibit 8-F with you. I hand you the exhibit. This shows, does it not, and I might cite for the Court's benefit this exhibit is labeled as showing relationship between ethnic compositions of certain junior high schools and the number of Negro and Hispano teachers in those schools—Dr. Bardwell, the first column after the school name shows what the school district projects as the percentage of Negro and Hispano students in those schools next fall if 1520 and 1524 have been implemented. A. Yes, sir.

Q. And the next column which you call "After Rescission" is in fact what those schools have in the way of ethnic proportions last school year, according to the school district's figures? A. That is correct.

Q. And, finally, in the third column, you have put not a percentage but the absolute number of teachers, have [201] you not? A. That is right.

Q. Taking Smiley, for example, you have noted that there are 23 Negro and Hispano teachers there, according to school district figures last year. A. That's right.

Q. Do you know what that would be as the percentage of total number of teachers there? A. I have that in another exhibit. This amounts to—I will have to—

Q. Do you know at the moment? A. No, I do not.

Q. If I suggested to you that the same information you have been using shows that last year there were 96 teachers at Smiley, would you accept that as probably the figure? A. If I am not held to it.

Q. And as a mathematician, it would be about what percent? A. It would look to be about 25 percent.

Q. As a matter of fact, isn't it at best a misnomer to label this "concentration of Negro and Hispano teachers"? Wouldn't a percentage have shown that better? A. Well, not necessarily, sir, because what we are talking about here, and I think this is a fair depiction of the information, we are talking about the number of Negro [202] and Hispano teachers located in those subject schools. Now, since there are 80 of these teachers altogether, then it seems to be a fair representation of the information to show in which schools those particular teachers are in fact concentrated, and I can't think of a better word for it. This would mean that 37—

Q. By concentration, then you are not talking about concentration at a particular school, but these particular schools? A. Yes, that's all we are comparing in this exhibit are the subject schools under the two resolutions.

Q. All right, I'm going to hand you next Exhibit 8-G, which again shows as you have labeled it "concentration" and here again you have used and these are in the same junior high schools, are they not? In fact, Dr. Bardwell, isn't what you have done in 8-G is simply make a bar graph out of those absolute numbers on the right hand column? A. That's exactly what was done, that's right.

Q. You are calling it there again concentration of teachers? A. That's right.

Q. Do you happen to know the total number of teachers, say, at Kunsmiller or Hill? A. I have those in my records and I—if you would like me to—

[203] Q. Well, from your present knowledge of all of these figures, Dr. Bardwell, would it be fair to say if this bar graph were shown as percentages rather than absolute

numbers, the percentage of Negro and Hispano teachers at, say, Kunsmiller and Hill would be higher relatively to Smiley and Cole than here shown? A. If we take the number of teachers, and they tend to be fairly uniform among the subject junior high schools, then whether one uses numbers or percentages it's really immaterial, but it is true, as I recall the figures generally, that Cole and Smiley do have more teachers generally than some of the other junior high schools shown here, so the percentages would decrease these bars somewhat. The extent to which this decrease occurs, I am not willing or able to testify.

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[204] • • •

Q. Let's start with 40, the base exhibit, where you have shown percentages which you say are taken from census tract data for 1960. A. I might say here—

Q. No, let me frame a question, please. Did you further refine the two census tracts to the west of Colorado Boulevard by enumeration districts? A. This information here—

Q. Did you or did you not, please. [205] A. No, I do not believe we did.

Q. How many enumeration districts are in those areas marked 51 percent and 73 percent? A. In this case, if my recollection is correct, there are two enumeration districts from the census tract 36-C and there are—

Q. Let me interrupt. 36-C is the one shown as 73 percent? A. As 73 percent.

Q. And the one marked 51-C is census tract number what? A. And census tract 36-B is 51 percent.

Q. Now, those census tracts are broken down into enumeration tracts, aren't they? A. That's right.

Q. And you are telling me there are how many in each of those? A. It is my recollection, so I can't be held to that.

Q. Yes. A. It is my recollection that there are two here.

Q. You are indicating 36-C? A. 36-C. I think there are two here, and there are two here, but I can't—

Q. You are indicating for that answer 36-B, are you not? [206] A. Yes, that's right.

Q. Do you recall what the enumeration tract showed as far as percentage? A. I will have to go back to my notes. I don't know that I have them here. They are in large bound books that are just simply too bulky to carry around, but I would be more than happy to furnish the information.

Q. Were these two enumeration tracts studied intensively in the preparation of your report on Park Hill? A. No. Well, yes, the information that was extracted from the census reports of the 1960 census tract of Park Hill is the 36-C and 36-B. This is the so-called Clayton Park area of the city, in which there was a large area of movement of Negroes toward Colorado Boulevard.

Q. You considered these two in your Park Hill survey? A. No, I considered more than that.

Q. But you did consider these? A. That's right.

Q. Isn't it possible, Dr. Bardwell, that if you had broken these two census tracts down by enumeration district you would have found differing percentages in the several enumeration districts? A. Oh, this is quite true.

Q. And isn't it possible basing this question really on your report that the westward, the westerly enumeration [207] tracts, in each of these, would have higher Negro percentages than the easterly? [208] A. I think this is generally true, but I caution you when you deal with a smaller area, smaller subjects, on enumeration districts, like this, that one can be fooled in the sense that certain of these enumeration districts will show, for instance, a higher percentage of Negro than census tract as a whole

and not necessarily in the path of the migration of the Negro families during that period.

This is particularly true in the northern part of this area.

Q. But, there would be differences? A. Oh, yes, there would be differences.

Q. Dr. Bardwell, I don't mean to keep you on your feet any longer than necessary, but I must move to your next series which involves some displays. May we have the 50 series?

Let me call your attention, Dr. Dardwell, to Exhibit 57, which is an overlay, is it not? Here, you did use enumeration districts, did you not? Here, you did use enumeration districts, did you not? A. Yes, we—

Q. That's all, that was my question. Do I understand that the green portion of the Stedman—the two green portions, the dog leg and the rectangle, in the Stedman district — A. These three here, this one and this one and this one?

[209] Q. Well, they are—the one on the south is contiguous, is it not? A. Yes.

Q. Those two green portions, overly, do they not, largely areas in which there is generally speaking a low percentage of Negro population by enumeration district in 1960? A. That's true, only part of the—

Q. Then, Dr. Bardwell—

Mr. Greiner: Your Honor, might the witness be allowed to finish his answer?

The Court: Yes.

A. I might point out, Mr. Creighton, that unfortunately enumeration district population in 1960 is the smallest subunit of population we could possibly get and, there-

fore, to apply that population directly to the green areas we have used those enumeration districts which were our most appropriate, most applicable, because those are the enumeration districts that are coextensive, as best we can, with the green areas that we have; that's right.

Q. But if I heard the first part of your response, you agreed that the green areas overlie largely white areas. A. That's right.

Q. And, therefore, to have moved them to Smith and Hallett would have been to take substantial largely white [210] pupils according to your methodology out of Hallett or out of Stedman and into Smith and Hallett? A. I am not certain I can say that. At least, it would be part of this area here. You see, I do not know exactly what blocks are assigned to this particular green area. What this is is a general depiction showing that the entire Park Hill area, the area that was coextensive with Stedman, was by far more or higher percentage Negro than any other part of Park Hill. What would have happened in particular with these particular green areas going out into Smith or from Stedman to Hallett from here to Park Hill is largely an unknown factor. One would have to estimate this in some way. It could well be, and in fact from my census I can assert that the area in which many of the Negro families moved first into Park Hill in the early stages or early parts of 1960 was precisely in this area here with respect to the green area right here.

Q. You are indicating the northerly green area in the Stedman district? A. Yes, but, nevertheless, in terms of time this area here was essentially the first area in which Negro concentration became higher than other parts of Park Hill.

Q. Dr. Bardwell, I am not sure I understand to what

extent you are willing to interpret this, but I will ask this question once more. Isn't it true from that exhibit that [211] if the green areas had in fact been moved from Smith and Hallett it would have subtracted largely white circles from the Stedman school? A. I cannot say that. I cannot say that, no.

Q. Would you admit that is a possibility, one of the possibilities? A. Obviously, yes.

Q. Now, Dr. Bardwell, let me direct your attention to your Exhibit 58. I believe you told us that the point on the upward axis—what's that called? A. This is called the ordinate, "Y" axis.

Q. "Y" axis? The points on the "Y" axis for 1960 are taken from the census? A. Yes.

Q. And the points on that axis for 1963, '64 and '65 are taken from school district data? A. That's right.

Q. What you are trying to show here, as I understand, is what might have been the case in 1962, for which you don't have that kind of data. A. Yes.

Q. And you put some rectangles there opposite the "Y" axis for the several schools? How did you determine those rectangles? A. From a mathematician's point of view, a [212] mathematician would simply draw one single line through the points.

Q. That would be called interpolation? A. Yes. Here, we wanted to give our analysis the widest latitude that we possibly could, and, here, for example, in the case of Stedman, even though Stedman at that particular time in 1962, according to our estimates, was between 30 and 45 percent Anglo, that the analysis still stands. In other words, the analysis itself is firm enough, even allowing a wide latitude of error in the estimates of the Anglo population for each of those schools.

Q. You have determined for yourself the latitude of error that you want to admit to by the rectangular bars? A. Well, some common good sense goes into this, from my knowledge of population movements.

Q. And this in turn is based on your study of Park Hill? A. Well, a number of other studies, as well, that there is something inherent in the fundamental nature of sociological populations that one does not have when you have evidence as compelling as this to have the intermediate years between '63 and '60 to go all over the chart. Things just don't happen that way. They don't happen in natural sciences or sociology, either.

Q. Even assuming the lower limits of your margin [213] of error, is it fair to say that the decline in Anglo enrollment peaked out in 1962, and that thereafter the decline rate modified consistently? A. Well, I am not quite sure I know what you mean by peaked out.

Q. Bottomed out, I should have said. A. Well, it is still, of course, declining.

Q. Yes, but at a lesser degree. A. It would have to, sir, because you can't have less than zero percent Anglo.

Q. I suppose not. A. No. In other words, you would be going off the graph here, of course, if you were to have a continuing series of—if the interpolation were extended in a straight-line manner as you are perhaps implying, then you would go below zero percent Anglo, and that, of course, is impossible.

Q. Now, you do not have to extrapolate after '63 because you have data. A. That's right.

Q. May we have your 70 series? And where is 76, Dr. Bardwell? A. Right here.

Q. In the lower left of that display? A. Lower left.

Q. Now, the arrows, will you tell us again, the [214] arrows represent what? A. Want me to illustrate? The arrow here, for example?

Q. You are referring to Hallett and Phillips. A. Referring to Hallett school district and the boundary change in the southeast part of Hallett, in which the figure on it is 20 percent.

Q. Yes, what does that mean? A. This 20 percent means that our estimate here of the proportion of the Negroes in that particular area—

Q. That's your professional estimate? A. That's right.

Q. Excuse me, go ahead. A. That the proportion of Negroes that were transferred out of Hallett because of that boundary change into Philips was 20 percent.

Q. 20 of the previous Hallett percentage? A. No. No, sir. 20 percent Negro.

Q. You mean of those moves, 20 percent was Negro? A. That's right, sir.

Q. What is the largest figure in the Hallett subdistrict, 25 percent? A. 25 percent refers again to estimates as best we can determine.

Q. From what, Dr. Bardwell? [215] A. Well—

Q. From what dates? A. Well, this 25 percent again is from the 1966 census, or, I mean census of Park Hill.

Q. That is your census? A. That's right.

Q. Your census indicates to you that Hallett subdistrict had 25 percent Negro in 1964? A. That's right.

Q. After the move or before? A. No, this was before the change. In other words, the entire district, subdistrict of Hallett, before this boundary change was actually made, is 25 percent.

Q. All right. A. Similarly, for the other subdistricts as well.

Q. All right, then, taking your example, the Hallett to Philips arrow, you figure that 20 percent of those moved were Negro? A. That's right, sir.

Q. Doesn't your '66 report show that there are higher concentrations of Negro residential patterns in the northern part of the Hallett district at that time than in the southern part? A. In this part up in here, yes, that's true, as far as the area is concerned, that's right. It may not [216] extend over to this area here. It is only in this part in here that we are talking about, but in general the northern tier of the areas that were in that 1966 study do show a higher proportion of the Negro residents.

Q. So, if something off the southern tier of Hallett would be moved to Philips, it would I suppose on that data involve a lesser percentage of black children than the district as a whole? A. Well, we are depicting in this information as accurately as is conceivable from the only possible source I know, and that is from my 1966 census, and those data indicate with the smallest subdistrict that I have in that information that this is the 20 percent out and this is 25 percent corresponding to the entire district.

Now, in terms of the precise location, we could go back to the individual blocks and determine that precisely, but this is an enormous task.

Q. Doesn't your 1966 data indicate, for example, the south and east part of Philips district was almost totally white at that time residentially? A. That's right.

Q. Therefore, movements to the contiguous areas of Montclair and Ashley would necessarily on that methodology move only white children? A. You mean actually here?

[217] Q. From Philips to Ashley. A. Yes, that's right.

Q. Moving from that part of the Philips district? A. That's right.

Q. And no other part of the Philips district was contiguous to Ashley, was it? A. Well, yes, this part in here, northerly, the northern part of the boundary changes.

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[218] * * *

By Mr. Creighton:

Q. Dr. Bardwell, still with reference to the 70 series and particularly to Exhibit 71, that shows changes in the school district in fact made in the elementary schools for the school year 1964 and 1965, does it not? A. Yes, sir.

Q. And that was after the receipt by that Board of the March 1st, 1964, special study committee report, was it not? A. That's right.

[219] Q. Are you familiar with that report? A. I am.

Q. Would it be fair to say that that report says, with respect to mobile units—

The Court: By the way, what's the exhibit number?

Mr. Creighton: This is Exhibit 20, Your Honor.

Q. —that the committee approves the use of mobile units temporarily to relieve overcrowding. However, care should be taken that these facilities should not become permanent. Is that your recollection of the recommendation? A. Something to that effect. I don't know the exact wording and perhaps I ought to see it.

Q. Certainly. I'm showing the witness Page B10 of Exhibit 20.

Is that a satisfactory statement of the study committee's recommendation? A. Yes.

Q. And in your 1966 study, Dr. Bardwell, and that for the Court's reference is Exhibit 38, wasn't one of your observations from your data that there had been, during the period you substituted up to 1966, and particularly in the years immediately preceding 1966, in the area we're talking about, there had been a rapid immigration particularly to the northern part of this area of Negro families; that these Negro families had on the average more school children per [220] family than the white families they apparently replaced? A. (Nods affirmatively.)

Q. And this happened very rapidly? A. Yes, this points up the variation in the percentages here shown in population statements here of 43 percent while, for example, 43 percent of the population in 1964 was Negro at Stedman, yet, on the other hand, the proportion of Negro students at Stedman was 85 percent and the difference in that percentage reflects that.

Q. That rapid change? A. The difference between percentage of Negro families and the percentage of students.

Q. There was a rapid change not only of racial composition but of family size? A. There was.

Q. Do you think the use of mobile units—

The Court: Was this a trend that was apparently at some earlier times?

A. A trend?

The Court: Yes.

The Witness: The trend had been manifested starting in 1960, in which one finds—and we're talking about Park Hill as a whole—that the population may remain stable for that entire period of time,

the same number of people in Park Hill over the six-year period, but the number of Negro [221] persons increased from 520 to 12,200 in the span of six years.

Q. Do you have any knowledge as to the deployment of mobile units in the elementary schools involved in this 70 series today? A. Yes.

Q. Are there mobile units at Ashley, for example? A. Yes. I have forgotten how many units at Ashley, and if my recollection is correct there are two. But at Smith we still have and even after this long period of time, after 1964, which is a period of over five years, we still have mobile units at Smith, four at Stedman, and four at Hallett. Park Hill only within the past few months—only in the past few months have the mobile units been removed from Park Hill. Still, the same four mobile units at Philips and so, since the 1964 report indicated the mobile units ought to be temporary in nature, here we have the same mobile units extending still today.

Q. Have there been any permanent facilities built in this area during this period; this time? A. The most recent one is the—yes, there have been some additions at Park Hill. This is as Mr. Armstrong informs me in the past year, the Park Hill addition has been made of around 300.

Q. Three hundred what? [222] A. Three hundred spaces; so, increased capacity.

Q. Do you know whether those are classrooms? A. Yes, classrooms.

Q. Finally, Dr. Bardwell, referring to your segregation indices, which are Exhibits 7G, 9I and 8I, I believe you can resume the witness stand—let me take the one that pertains to the most schools first, and that is Exhibit 9J.

Would you like to have it in front of you? A. Yes, please.

Mr. Creighton: Perhaps, Your Honor, those three exhibits I just mentioned, if I could have them.

Q. I hand you, Dr. Bardwell, Exhibit 9J. On voir dire I didn't discuss this with you, Dr. Bardwell, so I must ask you what pool of schools, what group of schools did you use to construct this exhibit? That is to say, what segregation index as shown for what schools? A. These are the 17 elementary schools that we have used as coming under the effect of the Resolution 1531. They include such schools, for example, as Stedman, Ashley, and the numbers of schools we have indicated in previous exhibits. I could list you—give you a precise list of those, if you like.

Q. Well, it's 17 elementary schools? A. That's right.

Q. And I suppose, if you narrowed your focus to one [223] school at a time, an all-white school would have a segregation index of 100, would it not? A. That's right.

Q. And an all-black school would have a segregation index of 100? A. That's right.

Q. So that when you start lumping schools together, all-white schools tend to raise the average, and all-black schools tend to raise your index? A. That's right. If the index is applied, for example, to a school like Stedman, then it's a segregation index.

Q. Just to Stedman. Let's apply the index to Stedman. A. If the resolution itself were rescinded, then the segregation index for Stedman would climb to 100. That means from the current status of Stedman, assuming the resolutions are in effect, would be a segregation index applied to Stedman very close to zero. Yet, if the resolutions were rescinded, then this segregation index for Stedman would be, I think, fairly close to 100.

Q. It would remain 100. When you say rescinded, you mean remain the same as last year? A. If you want to put it that way, sir.

Q. But with respect to 17 schools as a whole, is it fair to say that this shows a steady—that 9J shows a steady [224] decline in the segregation index during the years you have shown, even— A. That's right, except for the period 1966 to 1967.

Q. That would be the school years of what? A. This would be the school year 1966 to 1967; 1967 to 1968; and 1968 to 1969; the school year beginning in September indicated by the year at the bottom of the chart.

Q. I see. A. But—

The Court: Did you finish your answer?

The Witness: No, sir.

The Court: Go right ahead.

A. I was about to indicate that while there was a substantial decline in the segregation index from 1963 to 1965, that that segregation index is leveled out appreciably so that for the period 1966 to '68, it has remained almost constant.

Q. A little bit down, is it not? A. Well, that is random variation.

Q. Your exhibit shows a little bit down. A. It's random variations for the most part.

Mr. Creighton: I believe that's all I have, Dr. Bardwell. Thank you.

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[228] • • •

GILBERT CRUTER, a witness called by and on behalf of defendants, having first been duly sworn, was examined and testified as follows:

[229] *Direct Examination by Mr. Quinn:*

The Court: Give us your name and address and occupation.

The Witness: My name is Gilbert Cruter. I'm a teacher—I mean, an administrator with the Denver Public Schools, and my address is 2875 Monaco Parkway.

Q. Mr. Cruter, can you give your job title with the Denver Public Schools currently? A. Executive Director for School Community Relations.

Q. Could you explain to the Court briefly the function of that office? A. Basically, my particular responsibility is directly to the Superintendent and I advise the Superintendent on human relations and integration issues and help to design and implement programs to meet school system requirements.

Q. How long have you held your present position, Mr. Cruter? A. Since 1964.

Q. When was that particular office created? A. The office was created in 1964 as a result of a recommendation from the study committee that was set up in 1962 and did a two-year study on recommendations of the Board which was the creation of this advisory committee and the office was set up as a result of their recommendations.

[230] Q. Do other school districts in Colorado currently have similar offices within their administrative structure?

A. To my knowledge, there is only one and that is the Littleton School District, which has an office or a person who serves in a capacity similar to mine but doesn't necessarily function the same way.

Q. Could you briefly relate to the Court your personal background, particularly your professional background, Mr. Cruter? A. Well, academically, I have a Master's degree in education. I have been associated with the Department of State as a cultural affairs officer from 1961 to 1963. I have taught at Southern University in Baton Rouge, Louisiana, as directer of health and education, and I have served as congressional liaison officer for the agency for international development in Washington, D.C. And I have worked with the public schools since 1946 with a brief two-year leave of absence—well, actually, I have had three leaves of absence from the Denver Public Schools, to work in foreign service.

Q. Is one of your formal duties—does it have to do with teacher recruitment? A. Yes.

Q. Would you explain that to the Court? A. Well, as I indicated before, it's my responsibility to advise the Superintendent on these particular matters [231] because we were trying to secure some Negro teachers and I took it upon myself, with the advisement of the Personnel Director at that time, who was Howard Johnson, who is now the Deputy Superintendent, to visit Negro colleges which I had had some familiarity with in view of the fact that I had taught at Southern University and so, starting two or three years ago, this is the third year, I recruited at approximately 17 schools which were primarily Negro colleges throughout the South.

This is the reason—the reason we did this is because this was a fertile field for educators that had been un-

tapped by the Denver schools. Now, we do recruit from white institutions and we pick up what Negro recruits in education we can from those particular areas, as well.

Q. How do you conduct this recruitment, just briefly? What is your method of recruiting? A. Well, many of the people who have currently been working in the departments I either knew or have known previously. And so many of my contacts have been made directly with them. I also work primarily through the placement department, but also have side contacts, too. And then they tend to provide me with the names of individuals whom they think would fit into the Denver school system.

As you know, there is a great deal of recruitment of Negro graduates at the present time because of—well, [232] recruitment, I should say, by industry, business and government and so on, and so, consequently, the students you get is rather small because, consequently, you can't compete on the salary level that—with that of business and industry.

Q. Have your efforts, however, been successful to some degree? A. Yes, they have been. The first year was a primary—primarily a year of contact in which we were trying to lay the groundwork, so I think we probably got—I would estimate around 15 teachers that particular year. The second year I went down—and I was more or less more knowledgeable about the recruiting thing—the first year, incidentally, we didn't take any contracts with us; merely a letter of commitment. The second year I took the contracts with me. I issued 50 contracts and we wound up with, I think, around 39 or 40 teachers. This last year we again took out contracts with us as well as letters of intent for those who couldn't make up their mind, and

I had them sign the contracts that particular time, and I think we have, according to the latest information I have from Personnel Department, roughly 36 teachers out of some 40 that I had given contracts to.

Q. Those would be teachers who would be beginning employment in the fall of this year? A. That's right.

Q. Do other school districts carry on this type of [233] recruitment? A. This I couldn't say except that we have worked closely with Jefferson County and we have had one person who accompanied me this year to recruit teachers for the Jefferson County school system.

Q. Mr. Cruter, are you familiar with the plan which has been referred to as the Hallett Plan or sometimes the Hallett Demonstration Integrated School Plan? A. Yes.

Q. Could you explain to the Court what that is and what its origin was? A. Basically, the origin of the Hallett Plan was that a group of people from University Park School wanted to give their children an integrated experience and they selected Hallett as a school that had comparable socioeconomic levels with their particular school. So, as a result, there were some 45—50 youngsters who volunteered to go into Hallett and some 45 youngsters left Hallett in order to go into University Park and other schools.

Q. Is that a continuing program? A. Yes. It has top priority right now in view of the recent action of the Board and we are concentrating all our efforts in this area in order to try to—

The Court: Would you keep your voice up a little bit more.

[234] A. We're concentrating all our efforts in this area at the present time to provide an integrated experience for the people who work to avail themselves of the Hallett program, both from the Hallett area and also from—some 35 schools that are located within the south, southeast and southwest area of the city.

Q. Could you explain some of the means that have been utilized to implement this plan? A. Yes. We have met with the principals of the 35 schools involved. They, in turn, have sent out letters to parents, indicating that the volunteer open enrollment was available for the Hallett School. They have, for the purpose of efficiency, I guess—well, I won't say I guess—but I will say for the purpose of efficiency we have divided the 35 schools into clusters based upon geographic proximity to one another and have set up recruitment committees within those particular clusters. We have done the same thing in the Hallett area in which we have divided the area into blocks with the map indicating the number of youngsters in each block and have set up block committees made up primarily of people or parents whose children were bused out the first part of January at the time that the University Park and Hallett projects were started.

Q. Have there been any other means of publicizing this plan? [235] A. Yes, we are putting out another publication which will be out the 21st which is called the Volunteer Open Enrollment Dialogue, which is a summary or summation of all of the things that have taken place since the closing of school. We also had some radio announcements about the volunteer education. Mr. Lyons' office in Public Education is designing some advertisements to go into newspapers at a later date to try and see if we

can't get more people interested in volunteer enrollment.

Q. Can you identify Mr. Lyons? A. Mr. Lyons is the director of the office of public information for the schools.

Q. Mr. Cruter, I hand you a document which has been marked Defendants' Exhibit C and plaintiffs' counsel has been furnished a copy of that. Can you identify that document? A. Yes, this is a copy of the material which will go into the first publication sheet which is at the printers at the present time.

Q. When will that be sent? A. It will be mailed out Monday.

Q. And to whom will that be sent? A. This will go to the parents involved and currently involved in open enrollment programs as well as interested [236] parents within the seven clusters that we have set up.

Mr. Quinn: I'd like to offer Defendants' Exhibit C in evidence.

Mr. Greiner: May we have a brief voir dire examination, Your Honor?

The Court: Yes.

Voir Dire Examination by Mr. Greiner:

Q. Mr. Cruter, did you personally prepare Defendants' Exhibit C? A. The staff and myself, yes.

Q. What about the statistics that are reflected in Defendants' Exhibit C? Where did this come from? A. These are the latest publications on at least—our latest insofar as up to date, July 15, of the request to Hallett by the people in the seven clusters, that is, by the parents in the seven clusters that we have set up and also, the request to leave Hallett and it gives you

those who were involved prior to the close of schools, that is, those who were involved in January to June project, and the additional ones that we have acquired since that time.

Q. Approximately when was Defendants' Exhibit C prepared, Mr. Cruter? A. That has been in preparation for the last week.

Mr. Greiner: We have no objections, Your Honor.

[237] The Court: It will be received.

(Whereupon, Defendants' Exhibit C was received in evidence.)

The Witness: May I finish?

This has been in preparation since the last week but it has been an accumulation of information that we have prepared ever since the close of school.

Direct Examination by Mr. Quinn (Continued):

Q. Mr. Cruter, I now—

The Court: When did you start planning to send out such a document?

The Witness: Beg pardon, sir?

The Court: When did you start your planning to send out such a document? When did you decide that such a document would be—

The Witness: At the time that the Superintendent directed us as a result of Board action since Hallett was given top priority then we started our planning in this particular respect to see about trying to enlist as many volunteers as possible to

make this a pilot demonstration of an integrated school.

The Court: When did you first decide to send out a communication?

The Witness: This was done just before the close [238] of school. This is part of the planning process.

The Court: But the preparation was not completed or not started until a week ago?

The Witness: No, the final documentation was not done until a week ago.

The Court: Very well. Go ahead.

By Mr. Quinn:

Q. Mr. Cruter, I hand you another document which has been marked Defendants' Exhibit B and ask you if you can identify that document? A. This is a letter that was sent by Mr. Berge, President of the Board, to the Ellis parents to request—to solicit their participation involved in open enrollment plan.

Q. Do you know to whom that letter was sent? A. This went to all the parents in the Ellis School District—subdistrict.

Q. Can you give the location of the Ellis School, approximately? A. This is a—I can't give you the exact address but is a school in the southeast area of the city.

Q. And was this letter a part of the Hallett Plan which is being implemented through your office? A. Yes, because the Ellis parents, as well as the other parents in the cluster, wanted a statement from the Board President indicating what their particular response [239] would be

for this particular plan. So this was the reason for the letter.

Mr. Greiner: I don't mean to interrupt but we have no objection to the introduction of that exhibit.

The Court: It will be received.

(Whereupon, Defendants' Exhibit B was received in evidence.)

Mr. Quinn: I have no further questions of this witness, Your Honor.

Cross-Examination by Mr. Greiner:

Q. Since 1964, Mr. Cruter, you have served in the capacity of Director of Community Relations for the school district? A. No.

Q. Since what date? A. 1966.

Q. This position was created in 1964, is that correct? A. That's right.

Q. Now, is it fair to say, Mr. Cruter, that certainly one of the functions of your job is to communicate with the Negro community? A. No, my job is to represent the entire school district and this just happens to be one element of it.

Q. Let me put it another way. In the course of your [240] job, do you in fact communicate with the Negro community? A. Yes, I do.

Q. Now, does that communication include listening as well as talking? A. That's right.

Q. Well, since you have been Director since 1966, can you tell me whether or not there has been a growing concern in the Negro community over the continuance of segregated schools for Negroes? A. Yes, there has been.

Q. Now, as I understand your efforts with respect to the Hallett program, it is to—what is the ultimate objective at Hallett? It is to change a black school into a white school, is it not, predominantly? A. No, it's not to change a black school into a white school. It's to provide an integrated school setting in which you would have approximately a fifty-fifty ratio.

Q. Are you familiar with Resolution 1533, Mr. Cruter? A. Yes, I am.

Q. 1533 has some figures in it, does it not, as to what the hope is at Hallett? A. Yes.

The Court: What's the exhibit number, please?
Mr. Greiner: Plaintiffs' Exhibit 6A, Your Honor.

Q. Mr. Cruter, doesn't Plaintiffs' Exhibit 6A indicate [241] that the ultimate objective at Hallett is an exchange of some 500 students? A. Yes.

Q. Now, as I understand the statistics on Defendants' Exhibit B, to date you have received 158 essentially Anglo requests to go into Hallett and 100 Negro requests to leave Hallett, is that correct? A. That's right.

Q. So you are a little short on the objectives set out in 1533? A. That's right.

Q. I notice that—do you, by the way, have Defendants' Exhibit B in front of you, Mr. Cruter? A. No.

Mr. Greiner: I meant C. Pardon me.

Q. At the bottom of Page 2 of Exhibit C, it states that there are 33 Anglos who were going to continue in the program at Hallett. Did you speak personally with each of those Anglos, Mr. Cruter? A. No, I haven't.

Q. How did you arrive at this conclusion? A. Well, they had indicated—there were cards that were sent out prior to the close of school for those who wanted to—requesting those who had been attending Hallett whether they wanted to continue.

[242] Q. Mr. Cruter, exactly when were those cards sent out? A. Well, I couldn't give you the exact date on it.

Q. When did school close, Mr. Cruter? A. The 6th of June.

Q. 6th of June? A. Yes.

Q. So that those cards then were sent out before the Board rescinded these resolutions, is that correct? A. Well, I can't say that because I had nothing to do with the sending out of the cards.

Q. But you do know that the cards were sent out before school closed? A. Yes.

Q. Now, what is the fact with respect to your statistics showing the Negroes who are to continue in a program at Hallett? A. This was the same process.

Q. So, in other words, based on data that took place before the Board rescinded these resolutions you are continuing to assume a continuing 46 participation at Hallett? A. So far as we know, this will be the status of those who want to continue to go.

Q. Now, Mr. Cruter, are you generally familiar with what I will describe as the two basic purposes of the resolutions which were rescinded? Would you agree that the [243] first purpose was the stabilization of schools in transition such as Phillips, Park Hill, and East High School?

Mr. Quinn: Your Honor, I think we're getting

outside the scope of direct examination.

The Court: True.

Mr. Greiner: Well, I think what Mr. Cruter's testimony relates to, Your Honor, is essentially the issue of whether the substitution—of the effect of the substitution of 1533, and I don't think we can properly judge the effectiveness of 1533 unless we consider what was going to be done under the rescinded resolutions.

The Court: To my mind he was called only to testify concerning this one program, as their witness. But when you get beyond that, I think you're calling him as your witness.

Do you wish to do that?

Mr. Greiner: I have no objection to doing it, Your Honor. I might say, though, that Hallett was just one of the voluntary programs under 1533 and I would like to inquire to see whether Hallett is not in fact the one that has so far demonstrated the most, in quotes, "success."

The Court: All right. Go ahead.

Q. Now, there is also a voluntary aspect under 1533, is there not, Mr. Cruter, with respect to voluntary open enrollment at some of these other Park Hill elementary schools? [244] Yes, there is.

Q. Such as Stedman, Smith, Park Hill, Hill, Phillips and so forth? A. Yes, sir.

Q. What's been the response for voluntary open enrollment from the Anglo community, Mr. Cruter, in a school such as Phillips, for example? A. This I couldn't answer because the person who has that information is Dave McWilliams who has that particular responsibility. So

I couldn't give you any information as to what the response has been from those particular schools.

Q. You have been working solely on the Hallett program? A. That's correct.

Q. Now, you mentioned a recruitment, Mr. Cruter, of Negro teachers, did you not? A. Yes.

Q. And I understand that at least your involvement in that program of recruitment began some three years ago? A. That's correct.

Q. So that the figures for Negro teachers in the school district for 1968-1969—that would reflect how many of the three years of that recruitment? A. Would you restate that question? When you say reflect, are you talking about the number of people I have interviewed or are you talking about the number of people who [245] were employed.

Q. Who were employed. A. I would say roughly about 18 percent of the total number employed at both secondary and elementary level. In other words, this averages out about 39—36 to 39 per year.

Q. I think I can ask the question more directly Mr. Cruter. Plaintiffs' Exhibit 95 shows, for example, a total of 191½ Negro teachers in the elementary schools in Denver, does it not? A. Yes, that's right.

Q. And that's for the school year 1968? A. That's right.

Q. Now, that's 191½ out of 2,260 total for the elementary schools? A. (Nods affirmatively.)

Q. Now, out of that 191½, Mr. Cruter, how many of those were some of your new recruits you described? A. I don't have that breakdown. I couldn't give you that. The only thing I can say is that I know how many were employed each year that I went out to on the recruiting. The

year of 1968-1969, there were 39 employed, according to the information I received from the personnel office. And of the 1969-1970, there were 36 employed.

Q. I am sorry. I misspoke. When I said Exhibit 95—[246] it is in fact Plaintiff' Exhibit 97. If you will just examine that. Is Plaintiffs' Exhibit 97—does that indicate that there are still some Anglo schools that have no Negro teachers? A. That's right.

Q. Now, how many Negro teachers are you trying to recruit, Mr. Cruter? A. Well, I think you put me in a situation where I can't answer because I'm really not directly associated with personnel. We're just trying to recruit teachers.

Q. Well, I take it from your description that your function is to recruit Negro teachers, is it not? A. No, I took it upon my—I felt that one of the functions of my particular office was to at least try and bring back some integration so this is how I happened to get involved in recruiting teachers. I'm not a person who works in personnel.

Q. Now I believe you indicated that part of your job was to talk with and listen to Negroes in the community, is that correct? A. That's right.

Q. Can you report to us on the basis of your recruitment experience in the Hallett program, Mr. Cruter, how the Negro community reacted to the rescission of these resolutions? A. I'd like to put it on a much broader basis than that if I may.

[247] Q. That's fine. A. Because I think that the impact in the communities that we have had to deal with or have been dealing with has been one of defeat, rejection, insofar as the volunteer open enrollment plan is

concerned. We have just started our process of trying to go block by block to recruit people out of the Hallett area and we have mixed reactions on this.

Q. Now, that intense recruiting as I understand it—have you been participating in that? A. Part of it, yes.

Q. I take it since you're going to Africa next week that you will not be participating any further? A. We have a staff that will still continue that.

Q. When is that recruitment program going to end? A. We hope to have a pretty good report on it by the 15th of August.

Q. Now, last year in Hallett, under the exchange program there which was voluntary, there was a mutual exchange of approximately 50 students? A. Yes.

Q. Now, did the Black students in your opinion, Mr. Cruter, who remained at Hallett—did they receive the benefits of an integrated education there at Hallett? A. That is something I can't answer because I haven't been that closely connected with the school. I would say that [248] there were those who feel—I think we have in the community those who feel that a predominantly integrated school is beneficial and those who still feel a segregated school is beneficial. I think you've got two factions you have to consider.

Q. Now, Mr. Cruter, let me ask the question another way. Under the voluntary program last year, did Hallett become an integrated school? A. It depends on how you define integration.

Q. Let me ask you—before the program began, Mr. Cruter, approximately what was the percentage of Negro composition at Hallett? A. I would say it was about 85 percent.

Q. And at the height of the voluntary open enrollment program last year, Mr. Cruter, approximately what was the Negro percentage at Hallett? A. Well, it was reduced. The reduction was very small. So, if you're going to base it on a 50/50 or a racial balance, I would say it was not an integrated school.

Q. Well, would you say it went from about 85 percent Negro to say 80 percent Negro? A. Something like that, yes.

Q. In your communications with Anglo parents, Mr. Cruter, with regard to the Hallett program, have any Anglo parents indicated to you that they might be willing to send their children to Hallett if it was going to be a predominantly Anglo [249] school, but that they would not be willing to send their children to Hallett if it remained under this program a predominantly Negro school? A. No, I haven't heard that.

Q. Have you in fact talked with some Anglo parents? A. Yes.

Q. And you have not run into that kind of a condition? A. No.

Q. Do you recall whether or not that kind of a condition existed with respect to the voluntary open enrollment program in the second semester of 1969? A. It's hard for me to even answer that because at this particular time I was not as deeply involved in that process as I am at the present time.

Q. Mr. Cruter, I hand you what's been marked for identification Plaintiffs' Exhibits 37-A through G and ask you if you can identify those. A. Yes, I have seen these before.

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[250] * * *

Q. With respect to 37-B, which is the second page, Mr. Cruter, of that series of exhibits, is that not a request for voluntary open enrollment at Hallett school? A. Right.

Q. Is there not a condition stated there with respect to that participation? A. That's right.

Q. What is the condition, Mr. Cruter? A. Provided that Hallett becomes 60 to 65 percent Anglo as of 1/27/69, and that insofar as possible minority race children replace charges of University Park. We further do not believe volunteer open enrollment to be a realistic solution. Open enrollment is merely a farce. I might add this information does not come to my office.

The Court: What document is this?

[251] Mr. Greiner: 37-B.

The Witness: This goes to Mr. McWilliam's office and therefore I would not be aware of or be apprized of that particular statement.

Mr. Greiner: Your Honor, we would offer that series of exhibits at this time.

Mr. Quinn: We would object to the offer insofar as it relates to comments that are based on these—without some indication of who put them there or what the purpose was. This is purely hearsay. If there's to be any question of those comments themselves—

The Court: I don't believe Mr. Cruter has testified to the source of these documents.

Q. Mr. Cruter, do you know whether or not these exhibits come from the files of the school district? A. Yes, they come from the files of the school district.

The Court: And these are responses to this effort?

The Witness: Yes.

Mr. Greiner: This was the earlier efforts.

The Witness: This is prior to the close of school.

The Court: Are you offering them on some kind of a testimonial basis; that is, for the truth of the statements that are contained in them?

Mr. Greiner: No, Your Honor, I'm offering them only to show that certain parents did place certain conditions of [252] racial composition upon their willingness to participate in voluntary open enrollment. I'm not offering for example 37-B for the truth of the proposition that open enrollment is merely a farce.

Mr. Quinn: Your Honor, I don't see the materiality of them on that basis; somebody's personal opinion.

The Court: I suppose we can receive them circumstantially to show that there has been reaction to this effort.

Mr. Quinn: In a very indirect way.

The Court: But I don't believe that we can accept these statements on any testimonial basis; but that they are purely hearsay. Is that all right?

Mr. Greiner: Thank you, Your Honor.

Q. Mr. Cruter, with respect to the Hallett school do you have any information or opinion how the Negro community views such a segregated school? A. The Hallett area as well—and I think we need to say that this is about the Black area in general, the Negro area in general; they wanted integrated education and they wanted quality education.

Q. Pardon me, Mr. Cruter, but do they tend to equate those two things? A. I think they do. And the idea is that they don't want to be placed in a situation in which they're not going to be received by the particular community in which their child [253] will be or in other words there is a feeling of comfortableness and security that any parent feels for his school, just as a white parent feels about his child going into a Black community, the Black community feels the same thing about his child going into a white community. There are those who feel that there are certain benefits that will occur because of the opportunities to be associated with other children; to be able to live in a multi-racial society. I have had remarks made on both the black side as well as the white side indicating the necessity for a racial mixing. And because they recognize the fact that with the world getting smaller and with our recent exploits with the moon, that our youngsters are going to have to learn to live in a multi-racial society. There are also those who I think we have to look at it on the other side too—there are those who feel also that probably their child is getting a good education in a segregated school simply because their previous experience has been one of a segregated school so therefore they feel that they got something out of it and that he wants to continue it.

Q. You're talking about the parent's education? A. I'm talking about the parent's education. So I think this has some bearing on it too. But, by and large, children I think tend to profit from the experiences that they gain from their peers, and if they are in a racially mixed situation I think they materially profit from it both academically [254] as well as socially.

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Robert D. Gilberts—for Plaintiffs—Direct

[263] ROBERT D. GILBERTS, called as a witness by the plaintiffs, being first duly sworn, on his oath testified as follows:

The Court: For the record, give us your name and address and occupation.

The Witness: My name is Robert D. Gilberts. I live at 6495 Happy Canyon Road.

Direct Examination by Mr. Greiner:

Q. Dr. Gilberts, you are one of the defendants in this action? A. Yes.

Q. And you are the Superintendent of Schools of School District Number 1? A. Yes.

Q. You have been such, serving as Superintendent in this district, since approximately August 1, 1967? A. Yes.

Q. Dr. Gilberts, I would like to take you back in time to the passage of the Noel resolution. Do you recall when this was passed? A. This is Resolution 1490?

Q. That's correct. A. May 1968.

Q. So you were here then when that was passed? [264] A. Yes.

Q. Upon the passage of the Noel resolution, were you directed by the Board to prepare a comprehensive plan for the integration of the Denver schools? A. Yes.

Q. And you did prepare such a plan, did you not? A. Yes, I did.

Q. Does that plan have a title that we might use conveniently for reference? A. We have a copy of it here, "Planning Quality Education, Proposal for Integrating the Denver Public Schools."

Q. How many months was that plan under development? A. We had approximately sixty days, working days.

Q. And you, as I understand it, obtained the services of outside consultants to help you? A. Yes, we did.

Q. And that was Jack Dempsey and Associates? A. Together with a firm from California, that's Davis, McConnell and Rosson, who worked with him.

Q. I understand that during this development period you and your administration made a determined effort or definite effort to get inputs of ideas from various sources throughout the community, did you not? A. Yes, in that limitation of time we did the best [265] we could.

Q. And are some of those inputs reflected in the final product? A. Yes, they are.

Q. Now, that plan, "Planning Quality Education," that was introduced to the electorate here in Denver approximately when, Dr. Gilberts? A. First part of May—or, excuse me—first part of October of last fall.

Q. Was that the televised presentation that you have reference to? A. Yes, it was.

Q. Now, shortly after your televised presentation, you received a further direction from the School Board with respect to implementation.

Q. Well, the plan which we presented in October was a conceptural approach to dealing with the problem. It outlined in fairly broad terms various approaches we thought could be used to approach these problems here in Denver. It was not the kind of plan that would give the finite details of solutions in each of these areas. Therefore, it was necessary for us to begin planning in terms of specific elements of this book. The element that we began planning on initially was the one which related to the stabilization of schools in Northeast Denver.

[266] Now, that was a normal part of the planning process. I don't recall that there was any specific direction or that there may have been an identification on the Board's part that this was the first area they wanted to work in.

Q. Did that identification then take place sometime in November of 1968, to your recollection? A. Yes, I would estimate that would be about the time.

Q. Dr. Gilberts, so there is no confusion, as I understant it, you used the general term "stabilization" to include both the program of improving the percentage composition of such schools as Philips, Park Hill, and East, you include that act as well as the complete reversal of the racial compositions at Barrett and Smiley Junior High Schools? A. Yes, in this peripheral area around the Park Hill area, those two were included.

Q. Now, then, did you then during the course of the development of this plan for stabilization receive more inputs, so to speak? A. Yes.

Q. And you met with the School Board on this point? A. We began having a series of conferences working out the elements of this plan shortly after this presentation. I can't say exactly when, but within a week or two, [267] I believe. In addition to that, we had some public hearings where people had a chance to comment. We also set up some idea centers around the city where people had a chance to visit with us about the proposals and make additional suggestions.

Q. As I recall a statement in your deposition, it was that you considered some fourteen different alternatives during this process. A. Actually, there were 14 plans sufficiently finite so that they could be presented as options. I am sure there were many more ideas.

Q. All right, then, as I understand it, the first finite recommendation to the School Board which you and your staff presented was reflected in Resolution 1520, is that correct? A. Yes.

Q. And that pertained primarily, did it not, to a senior high school and a junior high school, namely East and Smiley? A. Yes.

Q. Now, there is a feeder relationship, is there not, from Smiley into East? A. Yes.

Q. Was this why those two schools were selected? A. Yes.

[268] Q. They were all—at least, with respect to East High School, this had been identified as a school in transition? A. Yes.

Q. And by that you meant that there had been over the years a gradual decline in its Anglo population, is that correct? A. That's true.

Q. Now, Smiley, as I understand it, at this point in time was already approximately 75 percent Negro, is that correct? A. I recall that as being approximately true.

Q. So you felt that you had to do something about the racial composition at Smiley if the improvement of the racial composition at East was going to have any longevity, is that correct? A. This was one of the factors, yes, sir.

Q. So that the first proposal then was 1520. Do you recall approximately when 1520 was formally presented to the Board of Education? A. January, I believe, 1969. I am sorry, I can't recall the precise date on it.

Q. Well, the Board didn't pass 1520 at the meeting at which it was first presented; is that correct? A. That's right.

[269] Q. What happened then, Doctor? A. There was a

public hearing on the presentation and it was acted upon at the subsequent board meeting.

Q. And approximately how long did that take? A. I can't be absolutely certain, but it seems to me it was in the vicinity of a two-week period.

Q. Plaintiffs' Exhibit 3, Dr. Gilberts, would indicate that 1520 was passed on January 30; is that correct? A. Yes.

Q. All right, now, after the passage of 1520, Dr. Gilberts, was some further detail necessary in order to implement the general proposal reflected in 1520? A. Yes, it was.

Q. And did that then lead to the development of Resolution No. 1524? A. Yes.

Q. And that's Plaintiffs' Exhibit 4? A. Right.

Q. Now, how long was it then between the passage of 1520 and the presentation to the Board of 1524, do you recall? A. Again, I can't be absolutely certain, but I would estimate within about a two-week period, the presentation of this, because this, too, is presented at one meeting and acted upon at another, I believe.

[270] Q. And there was also a public hearing which was with respect to 1524, was there not? A. Yes, I believe there was.

Q. Now, in general, 1520 and 1524 treated the secondary schools which have been focused upon, is that correct? A. That's correct.

Q. Now, was it also necessary because of the feeder relationship between these schools to do something about the elementary schools, in your judgment? A. That was our judgment.

Q. Now, in order to effect that objective, did that lead then to the development of Resolution 1531? A. Yes.

Q. And that's Plaintiffs' Exhibit 5? A. Yes.

Q. Now, how long—just a moment. I take it that in the

development of your overall plan, "Planning Quality Education", that you considered the elementary schools as well as the junior high schools and senior high schools, did you not? A. In terms of this element of that plan?

Q. Yes. A. Well, in the basic document we merely indicated that certain steps would be necessary in order to attempt to [271] stabilize those schools in Northeast Denver. It was not spelled out in detail. We did not have the time to qualify what kind of steps we thought would be necessary at the time the plan was presented.

Q. But I take it your plan did look at one of the alternate types of action which might be taken, and one of the items was the stabilization of schools, was it not? A. Yes.

Q. Now, Doctor, was 1531 passed by the Board when it was on the day of its first formal presentation to the Board? A. No, it was not.

Q. Again, was there a special public meeting with respect to 1531? A. Yes, there was.

Q. Now, with respect to these public meetings, I take it that one of the purposes of those meetings, Doctor, was to accept, to receive, rather, the comments of the community with respect to these proposals, was it not? A. Yes, the hearings were primarily to receive from members of the community their feeling about the plan as it had been presented before.

Q. And you attended each one of those hearings or meetings? A. Yes, I did.

[272] Q. I take it there must have been some people that spoke out against each of these resolutions in the meetings? A. There were.

Q. And were also proponents of these resolutions? A. Yes.

Q. Did you make any judgment in your mind as to what the balance of the "fors" and "againsts" were?

Mr. Jackson: Objection, it calls for a conclusion in an area I don't think is truly relevant in this particular area, Your Honor.

The Court: I am inclined to agree with it. I don't see where that makes any difference.

Mr. Greiner: Well, let me approach it another way.

Q. Dr. Gilberts, with respect to the statements by members of the community that took place—I am focusing now only on these three public meetings—did you feel from participating in those meetings that the community was against these resolutions?

Mr. Jackson: I make the same objection, Your Honor.

The Court: What's the purpose of this?

Mr. Greiner: I think I can show it in another way, Your Honor.

[273] Q. Did they level out—

The Court: Well, if I knew what you were trying to establish, I would be in a better position to rule.

Mr. Greiner: I am just trying to find out from the witness, Your Honor, what he felt the level of community acceptance was for these plans.

The Court: For what purpose?

Mr. Geiner: My next inquiry is going to be—

The Court: Where is it germane to anything we

are hearing here? Let's suppose he formed an opinion one way or the other.

Mr. Greiner: My next question, Your Honor, would be whether it made any difference to him as to whether or not there was a level of community acceptance for these plans.

The Court: Are you seeking to show something in the nature of bias of the witness?

Mr. Greiner: Not a bit; not at all.

The Court: Well, then, I don't see where it would affect us at all.

Mr. Greiner: Well, I think, Your Honor, that the witness will agree with us that the matter of community acceptance—

The Court: Are you trying to show that his viewpoint was wholly unbiased and even so, why is that [274] important, unless it would affect his credibility as a witness?

Mr. Greiner: Your Honor, what I am trying to show from this witness is that community acceptance was one of the facts which he felt was relevant and material in the development of these plans. That's all.

The Court: Well, you can ask him that.

Q. Is that right, Dr. Gilberts? A. Certainly, general community acceptance was a major factor in our considering what we would recommend. I would hesitate to say that we drew those conclusions completely from any one source of communications, hearings being only one of those.

Q. I recall that one of the resolutions has a statement, does it not, something about the level of community acceptance? Perhaps I am wrong. I guess I am wrong. I am sorry.

Then, Dr. Gilberts, I take it that after these public meetings that the Board went ahead and passed each of these three resolutions; is that correct? A. That's correct.

Q. The passage of those resolutions was not unanimous by the Board? A. That's correct.

Q. Keeping in mind the various inputs that went into [275] the development of these plans, Dr. Gilberts, is it fair to say that you supported each one of these resolutions? A. Yes, I did.

Q. As a matter of professional judgment, you felt that they would achieve their intended purposes? A. We had hoped so. They were our best judgment as to how we might approach the solution to attempting to stabilize the enrollment in these schools.

Q. I take it that there were the—that you must have concluded as a matter of professional judgment that the stabilization of these schools was important? A. Yes, we did.

Q. Now, that was from an educational viewpoint? A. I think it was very heavily from the point of view of the communities themselves and the kind of composition of population within those communities. We had hoped as a side benefit to this kind of stabilization we would provide ourselves with a broader base upon which we could test some of the hypotheses that are related to the question of whether or not an integrated education in effect does provide a better level of education for children.

Q. Now, I take it, Dr. Gilberts, that you recognized that there may be some relationship between the fact that a school which is segregated predominantly minority, some relationship between that fact and the quality of education [276] at that school, in terms of, for example, achievement? A. I would be a great deal more sure about the relationship

of socioeconomic cloth and academic level at a school rather than the racial relationship to that factor.

Q. Of course, in Denver, there is a closer relationship between race and socioeconomic levels? A. I don't believe I have data that would allow me to accept that.

Q. You don't accept that as a proposition? A. I don't believe I could state that with absolute knowledge it is true or to what degree it is true.

Q. After these resolutions were passed, did you and your staff take further measures looking toward the implementation of the steps? A. Yes, immediately.

Q. Could you relate some of the things that were done? A. Well, at the senior high school level it became necessary for us to identify youngsters who were going to be affected by changes in boundary and by transportation to provide preparing for them in the new schools they would be attending. This involved a registration of these youngsters for classes next year and the building of a program to accommodate those elections. That, of course, related to the need of differing numbers of staff members with different [277] kinds of academic qualifications or specialties in these schools, so it was necessary to reassign teachers, because we did affect numbers of pupils in these schools as well as just changing pupils.

It was also necessary for us to begin planning in the general area of a program the kind of changes in educational programs that we might implement in the schools to hopefully increase the quality of education within all of them.

Transportation began to be examined, although the details in this obviously could not be done until later in the summer, because this would be a part of the overall program which included voluntary open enrollment, with trans-

portation provided as well, and there is a possibility of interrelating these transportation systems, and until that was done we could not get into that in great detail.

We began talking about what we could do in terms of school-community relations, perhaps as a result of this to improve the climate in the communities of receiving schools, preparation of pupils and so forth. At the elementary level, the problem was not as complex because of the self-contained nature of the classroom. There it was pretty much a matter of identifying the number of pupils to be moved, notifying them of the movement, the school to [278] which they would be moved, and looking at the teacher requirements.

Q. Dr. Gilberts, Plaintiffs' Exhibit 18, I believe it is, is here before you. It is in evidence. Plaintiffs' Exhibit 18 reflects some of the teacher assignments in the secondary schools, does it not? A. It appears to.

Q. Now, was there not also in connection with 1520 and 1524—for implementation, was it not also necessary to purchase some additional school buses for the district? A. It was.

Q. And Plaintiffs' Exhibit 12 is a reflection of that bus purchase contract? A. Yes.

Q. Now, I take it that after the recision of these three resolutions that the administration then began taking steps for the implementation of 1533, is that correct? A. Well, a good portion of Resolution 1533 was embodied in the other resolutions, and, therefore, some of the planning which was related to those elements just continued. We didn't change Hallett School, as an example of the one you discussed this morning. It was a plan which began under the original resolution and was a continuing part of this one, so they continued. There was a need, obviously, to

reschedule the youngsters in the schools to [279] which they would be assigned in the fall and to reexamine the teacher staffing in these schools.

Q. Now, for example, around Barrett School, the attendance area for Barrett School had been redrawn, had it not, under 1531? A. We had identified some elements in the Barrett School area which would be reassigned to other schools in the district.

Q. So that was a matter of geographic carving up of the attendance area? A. It was a geographical identification by block.

Q. What happened upon the recision of 1531? A. Those youngsters that had been scheduled for assignment to other schools were reassigned to the Barrett School.

Q. And the place of their residence once more became a part of the Barrett attendance area, is that correct? A. Correct.

Q. Now, I understand, Dr. Gilberts, that there is a relationship between transportation of the pupils affected and the ability of some of these receiving schools to receive the students, is that correct, who were detached from these other schools? A. Will you state that question again? I'm not sure I understand it.

Q. I take it, for example, that in order to get a [280] child that had been in the Barrett area down to Steele, as is indicated here—this happens to be Stedman—from Stedman to Steele, that's quite a distance, is it not? Some sort of transportation had to be provided? A. Yes.

Q. Now, did that corollary between transportation and the implementation of 1531 exist in every instance? A. 1531?

Q. That's the elementary school. A. No, there were

some boundary changes that affected the school of residence as well. They were fairly minor.

Q. Now, can you give us an example of what you have reference to? A. Well, as I recall, in the Park Hill area, there were several little pieces reassigned there. I again will have to look at—I guess I have a map here.

Q. You have reference to Exhibit 11? A. I'm looking at Exhibit 11, yes. This indicates some boundary changes around the Philips School, Hallett School and the Park Hill School.

Q. Was there then through those boundary changes an exchange or reassignment of the children in those schools between those schools? A. Well, they were assigned from, say, the Park Hill District to another district, yes.

[281] Q. Now, in order to implement that reassignment, was it necessary to bus the child? A. No, it was not.

Q. And yet, even that aspect of 1531 got rescinded, is that correct? A. The entire resolution was rescinded; in the sense that those were changed, yes.

Q. Now, you will recall, I am sure, Dr. Gilberts, that there was a School Board election in May of this year. A. Yes.

Q. Did the question of these resolutions—was it one of the issues in this School Board election?

Mr. Jackson: I am going to object to that, Your Honor. I don't think this witness has been qualified to testify as to issues in the election and I fail to see how it has any relevancy to the hearing on the preliminary injunction.

The Court: Well, if it does, we can take judicial notice of it.

Q. My only point was, Dr. Gilberts, that shortly after the results of that election were known, did you then learn

that the Board was going to consider the recision of 1520, 1524 and 1531? A. After the new board had been installed there were several sessions during which time we discussed these [282] resolutions and looked at several alternatives that might be used.

Q. I take it the answer to my question is yes? A. Yes, after the new Board was installed.

Q. And was the educational value of the then existing resolutions discussed during those sessions? A. Yes, I believe it was.

Q. Was the educational value of what might happen if there was a recision discussed? A. Yes, I believe that was discussed.

Q. During the course of these discussions, Dr. Gilberts, was the actual language of 1533 before the group? A. No, it was not.

The elements that eventually appeared in this resolution I believe were discussed from time to time within these conferences.

Q. To the best of your recollection, Dr. Gilberts, when was the first time that there was a document which we can say was 1533? A. At the first regular meeting of the new Board of Education.

Q. That would be on June 9, 1969? A. The date of the passage of that resolution. I am sorry, I can't recall the date just exactly.

Q. I think that I can assure you that it was June 9th, [283] 1969. Now, so that was the first time that the Board had before it the actual language of 1533, is that correct? A. In that form, yes.

Q. Now, the school election took place on approximately May 20th? A. Yes.

Q. And the Board meeting at which recision took place

was on June 9, is that correct? A. You indicated the date. I accept this, if you have the date there.

Q. So, there was about a three-week period, is that correct? A. Approximately, yes.

Q. How many meetings were held at which you attended during this three-week period? A. I believe that we had three Board conferences.

Q. Do you recall the duration of each of those conferences? A. I would say they ranged from an hour and a half to two and a half hours.

Q. Do you recall whether each of those conferences was attended by all seven members of the Board? A. No, there were some members missing at these meetings.

Q. Now, is it a fair characterization of our position [284] in these conferences, Dr. Gilberts, that you were opposed to the recision of these resolutions? A. I felt the recommendations that had been made were ones that I could recommend, and, therefore, I maintained my position.

Q. Dr. Gilberts, are you familiar with the concept of the common school? A. The which?

Q. The common school? A. Well, I can think of several characterizations of a common school.

Q. Is it fair to say that when public education was being formulated in this country that the common school was the basic concept of our public education? A. Yes, that was at least the theoretical concept of what the school was or was supposed to have been.

Q. School was a mixing pot? A. This is what the literature describes as being the philosophical objective of it. I'm not sure the evidence will sustain that particular position.

Q. Now, as the concept of the common school was applied to growing metropolitan areas, it no longer became possible, did it, to have just one school for a community? A. Well,

that was a problem initially in many of the urban centers, such as New York, and some of the larger eastern [285] cities. There was never one school in those cities.

Q. But perhaps there might have been one high school, for example—in not New York City? A. Yes, this, of course, was a highly selected educational institution at that time which very few people attended.

Q. Do you see any relationship, Dr. Gilberts, between what I believe the school district refers to as the neighborhood school policy and the concept of the common school? A. Well, I think that there is similarity between many of the schools at that point in history which was—were at that time classified as common schools and some of the same problems we have presently in the large cities of the nation. There have always been socioeconomic stratifications within the large cities and schools that were established within those cities did not reflect the total spectrum of socioeconomic class. Therefore, I suppose from their point of view schools in large cities today are probably more similar than dissimilar.

Q. I take it, Dr. Gilberts, if I understand your testimony correctly, that you felt that the stabilizing measures inherent in these three resolutions were important in order to improve communications between the various racial and ethnic groups of this city? A. That certainly was one of the aspects that I felt [286] was important and is important.

Q. And I take it that you felt that you had to begin somewhere in improving these communications, is that correct? A. Well, the reason for selecting the northeast area of the city was because it was quite apparent that it was an area in transition and that there was possibility that by taking these steps that we recommended that we

may have been able to contribute in some way to the continuing resegregation in that area. Now, there is a body of research available that indicates that once a school reaches a certain point in composition—one figure that's used is 30 percent—there tends to be a rapidly increasing curve of segregation. There is a question of whether or not that is cause or effect, of course, whether it merely reflects the occurrence of change within the communities or whether or not it causes or interrelates, both causing and reflecting.

Q. You were in court this morning when we were discussing the racial composition of Stedman School, were you not, in connection with the 1964 boundary changes? A. Yes.

Q. You will recall that the neighborhood of the Stedman District was represented to be some 45 percent Negro, is that right? A. At that point in time, I believe this is the figure [287] they used.

Q. And yet the school population of Stedman School was about 85 percent Negro, is that right? A. These were the figures I believe presented, but I have no personal knowledge of them.

Mr. Jackson: I am going to object, if the Court please, to this line of questioning. The witness testified he came to this city in 1967. Counsel is attempting to inquire as to matters in 1964. If he is attempting to go through the testimony of the previous witness, I believe the exhibits are in and we can look at those.

The Court: Overruled.

Q. Dr. Gilberts, that's merely an example of statistics I just cited to you. That's merely an example of how the

neighborhood changes when it is within transition. Let me— A. Be specific, will you, please?

Q. Let me be more specific. As Negroes move into the neighborhood, is it not true, Dr. Gilberts, that the first Anglos to leave generally are those with school-age children?

Mr. Jackson: Objection. It calls for a conclusion.

The Court: If he knows, he can answer. Overruled.

A. I'm not sure I do know. I don't believe I know as a matter of fact that this is true.

Q. You would also know then that the last Anglos to leave are the older whites with no children in school? [288] A. This would follow if the first assumption is correct.

Q. Might that not explain why the racial composition of the school would run ahead of the racial composition of the neighborhood? A. Could very well.

Q. You will recall, Dr. Gilberts, a discussion we had during your deposition concerning certain characteristics of these segregated schools, certain objective indicia which they seem to share in common? A. I recall in general.

Q. Did we discuss such things as a higher dropout rate generally in a segregated school? A. Yes, and I believe I kept inserting into that testimony this is true of lower socioeconomic areas and whether we do identify it as strictly a racial characteristic or socioeconomic characteristic is questionable.

Q. There also tended to be lower teacher experience at the segregated school? A. I indicated I thought there might be exceptions to that but that generally that was true.

Q. That there generally tended to be more new teachers at the segregated schools?

The Court: Are you asking him what he said before? Or what his testimony is now?

[289] Mr. Greiner: What his testimony is now.

The Court: If you know.

A. I thought he was making a statement. I am sorry.

Q. The question is, does there tend to be more new teachers, Dr. Gilberts, at these segregated schools?

The Court: You mean in Denver?

Mr. Greiner: Yes, sir, these segregated schools, Stedman, Smith, Hallett, Barrett.

The Court: Well, you heard the testimony.

A. There are. However, I have some question about those data. They include the years of experience in Denver and we do hire a good many teachers with experience outside of the school system and they are placed, many of them, in those areas. I'm not sure just to what degree, counting total experience, there are more beginning teachers in that area with lesser experience than other parts of the city.

Q. I take it from your earlier comments, Dr. Gilberts, that you do not feel that there is a direct relationship between the integration of the school population and improvement of the achievement of the minority group in that integrated environment, is that correct? A. What kind of improvement in the minority group? Academic improvement, is that what you are talking about?

Q. Yes, sir. A. I have seen no evidence that would lead

me to believe [290] there is an absolute relationship between the two.

The Court: You are familiar with it? Are you thinking of standards, achievement standards are equal in the segregated schools?

The Witness: No, what I am saying, Your Honor, is that in the research that I have read where they have tried to control on one hand for socioeconomic class and then to make comparisons for achievement and do the same thing based on race, there is no correlation that is of any substantial nature where race is related to achievement. There is some substantial determination in terms of the socioeconomic class in terms of achievement.

Q. Have you read a publication—

The Court: You don't think then that segregation per se produces a lower level or standard?

The Witness: Well, sir, I believe that there are—

The Court: Or that integration makes a contribution to—

The Witness: I believe integration is important, but I believe it is important from the point of view of opening and breaking down some of the barriers of communication we have in our society. I think that can be reasonably well established. When one begins talking about the relationships between that process and the academic achievement, we have an extremely difficult area in which to research and the [291] materials that I have read over the years and recently reviewed show clear indication that

there is such a relationship. I would hope that there is and one of the reasons why we have increased the base of integration through plans that we have proposed would be to give us a broader base upon which to continue to test that hypothesis.

Q. Dr. Gilberts, does part of the literature which you have read in this area include a report of the United States Commission on Civil Rights issued in 1967? A. Yes.

Q. Entitled "Racial Isolation in the Public Schools"? A. Yes.

Q. Now, Dr. Gilberts, isn't there rather conclusive proof that segregation in fact retards the learning processes of the minority child?

Mr. Jackson: Your Honor, I don't know if they have intended to call this witness as an expert witness, but, certainly, we are getting into a field that appears to call for expert testimony and I don't see that it is particularly relevant in this fashion at this particular hearing from this witness.

The Court: Overruled. As I understand it, he is seeking to refresh his recollection or discredit him, I'm not sure which, but he is referring to some official report, I take it, and asking him if he is familiar with it [292] and if it states a particular thing.

Are you able to answer the question?

The Witness: Only in a general way, Your Honor. I would have to look at the document to be sure, but my recollection is—I don't think I can look at 300 pages or whatever it is in a short period

of time here—that in this document there was an assertion that there was—

The Court: Mr. Greiner is always giving somebody a book to read during the course of the trial.

Mr. Greiner: Part of the educational process, Your Honor.

The Witness: I am afraid it is not possible for me—would you identify the place for me in there?

The Court: You want him to search it out, too?

The Witness: I believe that the document indicates that, or, asserts that there is definitely a relationship between the segregation and lower achievement or lower achievement in the schools, but I don't recall that it specifically sorted out all of the other independent variables that could have a part of this and then establish racial isolation in and of itself as an absolute factor in the lack of achievement.

Q. One of the other items referred to in this report was the psychological damage imposed on the minority child in the segregated school.

[293] Is your opinion of that conclusion of the report similar? A. I don't consider myself a sufficient expert to judge that absolutely. I do have a feeling that certainly this may be an extremely important factor in terms of the youngster's own concept of himself and his feelings of importance and his ability to be motivated and to succeed. I think it is a factor, yes.

Q. Now, you are aware, I know, Dr. Gilberts, that in Browne against Board of Education, the United States Supreme Court recognized that psychological damage, did it not?

Mr. Jackson: I'm going to object to the counsel asking the witness what the Supreme Court has said on a case.

The Court: There is no assurance that it is gospel. Overruled, that particular facet. In other words, supposing he has read that? Are you aware of it?

The Witness: Yes, sir, I am.

Mr. Greiner: What I am getting at—

The Court: Well, we take judicial notice, though, of what the Supreme Court has said.

Mr. Greiner: What I am trying to get, Your Honor, is superintendent notice of it.

Q. Now, that finding of the Supreme Court was in a [294] so-called de jurie case, is that correct? A. That's correct.

Q. That's where the state had by law maintained a dual school system, one for whites and one for blacks? A. Yes.

Q. Is there something that you read, Dr. Gilberts, that indicates to you that the psychological damage is different in the two situations, de jurie on the one hand, de facto on the other? A. I can't say there is anything that I have read that might lead me to believe that, but I might add to that the court has refused to draw the same conclusion in the case of de facto.

Q. I won't take you into the area of the law, Dr. Gilberts. I will leave you there. I take it from your comments that you have no particular training in sociology or psychology, is that correct? A. I have a minor in social psychology for my Ph.D.

Q. When did you receive that? A. '61.

Q. Now, under 1533, Dr. Gilberts, I believe there is, as you mentioned, to be a continuation of certain of the programs that were included in, for example, Resolution 1531, is that correct? A. Yes, sir.

[295] Q. Isn't the essential difference between the rescinded resolutions and 1533—can't you state those to fall into about three areas? The rescinded resolutions made the transportation aspect mandatory, isn't that correct? A. In 1533?

Q. In 1531. A. Yes.

Q. Now, there were also some voluntary programs under 1531, for example, as I recall, Hallett School? A. This was one of them, together with voluntary open enrollment and the idea of grouping some of the schools in North Central Denver and Northeast Denver with schools in Southeast and Southwest and so on.

Q. But that's a point in common between the two? A. Yes.

Q. And what we are focusing on now are the differences. A. I'm sorry.

Q. So mandatory transportation is one of the differences, is that correct? A. Yes, sir.

Q. And another difference is in the actual attendance areas for particular schools, is that not also correct? A. Yes.

Q. Are there any other major differences in your opinion? [296] A. I believe those cover the major differences.

Q. What about the difference of the effectiveness, Dr. Gilberts, with respect to the objective of stabilization here in Northeast Denver? Is 1533 in your opinion going to be as effective as 1520, 1524 and 1531? A. Well, I suppose that's a matter that might be debated. One can look at short term and long term—

Q. Well— A. —accomplishment.

Q. Let's start looking at, first, short term. September 2, 1969, Dr. Gilberts— A. I don't believe that we will be able to accomplish everything that we have indicated in that short a term under the new resolution.

Q. The school district has had a program, has it not, of voluntary open enrollment? A. Yes, as a matter of totally free choice on the part of the parents.

Q. Has voluntary open enrollment in Denver ever integrated a school? A. I don't believe it has ever had a good chance and, since it has been promoted and designed, had programs that would attract people into it. It has only been in operation actually since last January, and, therefore, I don't believe the test is adequate yet.

[297] Q. Our objective at Hallett, as I recall, is to get 500 children involved in the exchange program. A. This was in the original resolution, I believe. Five hundred—yes, you had that document out this morning. I think you verified that.

Q. Yes, it was Exhibit 5A. It was your report to the Board on implementation of 1531. A. Yes.

Q. Now, has the target at Hallett changed? Is it no longer a mutual exchange of 500 children? Is that what you indicated? A. We would certainly like to achieve that, if possible.

Q. Mr. Cruter indicated that you had between 100 and 150 at this point, is that right? A. Yes, after one week of the campaign that we have just initiated.

Q. Didn't the initiation of that program start on July 7, Dr. Gilberts? A. Yes, it did.

Mr. Greiner: No further questions.

Cross-Examination by Mr. Jackson:

Q. Dr. Gilberts, the goal of 500 in the exchange on the Hallett program is composed, is it not, of 250 Negroes [298] moving out of the school and 250 whites coming into the school? A. Yes, I believe that's true.

Q. So, we are not talking about a wholesale shift of 500 students out of the school and 500 back into the school? A. I don't believe so.

Q. And under the present status report as Mr. Cruter advised us this morning, we are somewhere over the 200 figure then? A. In both directions, yes.

Q. Dr. Gilberts, much mention was made of the public hearings which were held following the introduction of Resolution 1520, Resolution 1524 and Resolution 1531, and the question was asked as to whether they were discussed at these public meetings.

Were they the only matters that were discussed at these meetings in terms of their specifics? A. Well, the discussion was not controlled absolutely. There were a number of other items that were brought into it, but these were the primary items.

Q. The programming and the steps taken by the school district to implement the Resolutions 1520, 24 and 31, you testified as to certain of the work that had been done in that area. Is there any carryover value to other programs [299] of the work which has already been done in this area? A. Yes, in those areas that were consistent between the two resolutions, certainly, there is a lot of carryover value.

Q. And there were—oh, excuse me. A. And there are

some other programs which will be implementing it. I think there will be some carryover, too.

Q. And there was a great deal in common between the 1520, 24 and 31 programs and the program under 1533? A. Yes, other than those items we mentioned were eliminated.

Q. You were asked on direct examination whether or not the boundary changes had been approved by the Board in the Northeast Denver area, the ones which did not involve any great distance of travel on the part of students that involved going into Phillips and from Phillips out to—or from the Stedman area into Ashley and around in that area. That boundary change had been agreed upon, is that correct, by the Board in their resolutions? A. Yes.

Q. Had these children actually changed their schools? Had they actually gone to the new schools? A. No, sir.

Q. There had been no movement at all? [300] A. No, sir.

Q. There was just a planning move which had taken place at that time? A. Yes.

Q. Now, referring to the teachers that might on occasion be found in schools where there is some concentration of minority children and the fact that on occasion there are teachers present who have less experience than others and are classified as beginning teachers, I didn't understand your testimony to be that the beginning teachers were any less qualified than other teachers?

Mr. Greiner: Your Honor, could we establish which of us can lead this witness? I object.

The Court: He may.

Mr. Greiner: Pardon?

The Court: The rules are clear.

Mr. Jackson: The rules are clear—excuse me?

The Court: Yes, just keep your remarks this way. I think he can ask him any questions, cross-examination, really, even though it may be a friendly witness.

Mr. Greiner: Thank you, Your Honor.

The Court: Go ahead.

A. There is no total relationship, I do not believe between the experience and ability of the teachers, although certainly, experience is a factor.

[301] Q. But it doesn't necessarily follow that a beginning teacher would have to be then less qualified? A. Not necessarily, no.

Q. Dr. Gilberts, I believe you testified that Resolution 1533 in its present form first appeared at the Board meeting on June 9, 1969, is that correct? Assuming that's the date the resolution was passed? A. Yes, assuming that, yes.

Q. But the programs contained in 1533 have in fact been before the Board on a number of other previous occasions had they not? A. Yes, they were a part of the other resolutions.

Mr. Jackson: I have no further questions, Your Honor.

The Court: Do you have anything further?

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Robert D. Gilberts—for Plaintiffs—Redirect

[301] • • •

Redirect Examination by Mr. Greiner:

Q. Dr. Gilberts, I am handing you what is in evidence as Defendants' Exhibit C. The second page thereof depicts the total number of students who have volunteered for the Hallett program. A. Yes.

Q. What's the total? A. 258.

Q. And that's how many are going to Hallett? [302] A. 158 are indicated here.

Q. How many are coming from Hallett? A. 100 are indicated here.

Q. Well, is that possible, Dr. Gilberts? A. Well, this is not the point at which this will be applied and this is merely a progress report and there is no indication of whether or not these are the figures that will be used finally.

Q. But I think you would agree, would you not, that until 50 more children transfer out of Hallett there is only going to be 100 Anglo children going in, would you not? A. I'm not sure that I could agree to that. There may be some additional space at Hallett that could provide for a few additional whites. I am not sure.

Q. Dr. Gilberts, would you agree with the general concept that I have just stated? A. In general, yes.

Q. Now, so that there is no confusion, Plaintiffs' Exhibit 5A, that was prepared by you or your staff? A. This is one of those that we had at the deposition?

Q. Yes. A. It appears to be, yes.

Q. On Page 10 of Exhibit 5A, there is described the Hallett program on 1531, is that correct? A. Yes.

[303] Q. And does it not provide for 500 Anglos going in and 500 Negroes going out? A. You are right.

Q. Now, has that goal changed? A. As I indicated before, we hope to attain that.

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Howard L. Johnson—for Defendants—Direct

[360] • • •

HOWARD L. JOHNSON, a witness called by and on behalf of defendants, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Creighton:

The Court: Give us your full name and address and occupation, please.

The Witness: Howard L. Johnson, 1130 South Franklin Street, Denver, Colorado. Deputy Superintendent of Schools.

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[361] • • •

Q. (By Mr. Creighton) Mr. Johnson, what is your present employment? A. I am Deputy Superintendent of the Denver Public Schools.

Q. How long have you been employed by Denver Public Schools? A. I have been employed for the Denver Public Schools since September 1930.

Q. And is that a common name for School District Number 1, the City and County of Denver? A. Yes, sir.

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[365] • • •

Q. And under these noninstructional, nonbusiness administrative duties, what are some of the duties you had there? A. They are pretty largely in the form of certain directives having to do with the schools, maybe in regard to certain bulletins, approval of certain noninstructional activities within the schools, the general interpretation of policies established by the Board of Education and the administrative staff.

Q. Did these noninstructional administrative duties include matters relating to the transfer of pupils? A. Yes, this part came under the pupil personnel services.

Q. And did those noninstructional administrative [366] duties include matters pertaining to school subdistrict boundaries? A. Yes, until such time as the planning and engineering services were establishes, and roughly it was included in my responsibility until approximately two and a half to three years ago, at which time there was a cooperative effort as this duty became more of planning and engineering.

However, I had the responsibility during the period from approximately 1960 until, I would say, 1965, 1966.

Q. And during your ocupancy of that office from 1965 or '66, as you have testified, until you left that particular office last year in '68, school subdistrict boundary matters were handled largely by whom again? A. Largely by me, and even during that period of time until our recent reorganization of a year ago I worked very closely with that office in regard to certain aspects.

Q. With what office? A. With the office of the assistant superintendent for planning and engineering.

* * * * *

[367] * * *

Q. Has there been, then, a difference in the function of the deputy superintendent under the new organization as compared with the organization that obtained between 1960 and '68? A. Yes. The difference is pretty largely this: the deputy superintendent position prior to 1968 was identified as one of the assistant superintendents who assumed the authority of the Superintendent during his [368] absence and then assumed certain top level adminis-

trative authority as delegated by the Superintendent; whereas, under this arrangement there is a specific job description in regard to the responsibilities of the deputy in coordinating the activities day to day in these six departments or divisions.

Q. And when in this time span we have been covering did the present superintendent, Dr. Gilberts, take up his duties? A. Dr. Gilberts assumed his duties on August 1, 1967.

Q. Mr. Johnson, you indicated that prior to last year when you were superintendent of personnel services, among your duties were those relating to the recruitment of teachers, is that right? A. That is correct.

Q. In this connection, are you familiar with the policies, if any, of the school district relating to teachers? A. Yes, I am acquainted with it.

[368A] Q. Mr. Johnson, there is in evidence in this case an exhibit, Plaintiffs' Exhibit 26, which is Policy 1617A. Would you tell us the effective date of that policy? A. This policy became effective in April 1, 1963.

Q. Now, since the effective date of that policy, has there been any change in the policy or its equivalent as it affects teachers? A. Yes, there has been this change, in this respect; that this policy on the basis of classified personnel—

Q. Now, you might explain to the Court what you mean by classified personnel. A. Classified personnel would be the so-called non-teaching or non-certificated personnel. It would include such as bus drivers, custodians, lunchroom workers, clerical help, those individuals who are not licensed by the school as certificated teachers.

Now, as a result of an agreement that was signed between the School District No. 1 or through its Board of

Education and the Denver Classroom Teachers Association who had gained recognition of the city as the official representative of teachers, on April 8th, 1967, this agreement was put into effect and adopted by the Board of Education and it includes this policy.

Q. Excuse me, Mr. Johnson. I have handed you Exhibit—an exhibit marked Defendants' Exhibit E. Is that the [369] agreement you are referring to, that you're speaking of? A. That is the agreement.

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[370] * * *

Mr. Greiner: We have no objection, Your Honor.

The Court: It will be received. What's the number of that?

Mr. Creighton: Defendants' Exhibit E.

(Whereupon, Defendants' Exhibit E was received in evidence.)

Direct Examination by Mr. Creighton (Continued):

Q. Now, Mr. Johnson, you said that nonclassified teachers were not affected by Exhibit E. A. Non-certificated, or as we call them, classified employees. They are termed non-certificated. We use the classified, and the other group of certificated people being called certificated personnel.

Q. But the teachers' agreement, did it affect the previously existing policy, 1617A? A. Yes, it had this effect, that there were some items in this agreement which, of course, supersede Policy 1617A that probably are a little bit—probably clarified to a greater degree in teachers' rights in cases of transfer, assignments and so forth, and consequently I would say it is [371] defined more clearly as it relates to employee relationships.

Q. Are you familiar with this agreement? A. Yes, sir.

Q. Can you direct our attention to the section of it having to do with teacher transfers? A. Yes, on Page 25 of the agreement, Article 14, and under the heading of "Transfer," would include the matters as it relates to teachers—to transfers of teachers in this case, not all certificated personnel, only classroom teachers; those individuals of this—that this group would represent in negotiations with the Board of Education.

Q. Are there any portion of Policy 1617A which now control the teacher transfer arrangement? A. No, on the basis of the signed agreement between the Board of Education and Denver Classroom Teachers Association, any articles in this agreement supersede those of policies stated elsewhere.

Q. Now, Mr. Johnson, do transfers apply to teachers presently hired—presently employed by the district? A. Yes, it is.

Q. Now, do they apply—does this transfer policy then apply to teachers who have not yet commenced employment with this district? A. No, the agreement such as it relates to transfer—this relates only to the teachers presently hired—presently employed by the district? A. Yes, it is.

Q. Now, do they apply—does this transfer policy then apply to teachers who have not yet commenced employment with this district? A. No, the agreement such as it relates to transfer—this relates only to the teachers presently employed. As of [372] September 1, 1969, at the beginning of the work for teachers, a contract year, this agreement will apply to them immediately as of that date.

Q. Could you outline for the Court the way in which the present transfer policy under the Exhibit E operates? A. Yes, if you are referring to Article 14 on the basis of transfer, I think there are about four or five items that need particular attention and one is the principal criterion for consideration of a request for transfer—is whether or not the request will result in the best educational program for the school district. A request for transfer will not be granted if a teacher does not qualify for the existing vacancy. That is one section.

Another section is 14-2-2, that the best educational program results from the selection of a school faculty which is well balanced in terms of teachers' experience, general background, and competency, and careful consideration will be given to each of the above when filling vacancies.

Q. Now, Mr. Johnson, are those general principles incorporated in the previous policy, 1617A? A. That is correct, and this would be the general criteria on principle we work under on this particular basis with the understanding that we would discuss with personnel regarding that important part.

Q. And what is the next important factor that you [373] have identified under transfer policy? A. There are about three important factors as we think of transfer: a request by a teacher for transfer, and it is outlined here, but rather than reading from here I can define it a little bit more clearly.

Mr. Greiner: Your Honor, we would object to the witness interpreting the exhibit. I think the exhibit states what the policy is.

The Court: Very well, Let him read it.

A. And in reading from Article 14, "That not later than April 20 of each school year . . ." Now, these are transfers requested by the teacher. "Not later than April 20 of each school year, the superintendent shall have posted in the office of each school a list of the known vacancies which will occur during the following school year.

"14-3-2, Teachers who desire a transfer to another building shall file a request on the appropriate form with the superintendent not later than May 1 of each year. Requests on file prior to the posting of vacancies will also be considered. If a transfer is to be made the teacher and the administrators concerned will be notified in writing of the new assignment. Except in unusual cases teachers who are to be transferred will be notified before May 20.

"14-3-3, Not later than May 20 of each school year the superintendent shall have posted in the office of each [374] school a supplemental list of known vacancies which will occur during the following school year.

"14-3-4, Not later than June 1 of each school year teachers may file applications for transfers to positions listed on the supplemental list of vacancies. Requests on file previous to the posting of vacancies will also be considered. If transfer is to be made the teacher and the administrators concerned will be notified in writing of the new assignment. Except in unusual cases, teachers who are to be transferred will be notified in writing before the close of the school year.

"14-3-5, No assignments of new teachers in the school system shall be made until all pending requests for transfers have been processed. If a teacher does not wish to be considered for vacancies which occur in the summer, the teacher must cancel his request for transfer in writing.

"14-3-6, In considering a request for transfer the convenience and wishes of the individual teacher will be honored to the extent they do not conflict with the instructional requirements and best interests of the school district.

"14-3-7, If more than one teacher has applied for the same position, the teacher best qualified for that position shall be appointed. Qualifications being substantially equal, seniority in the school district shall control.

[375] A. (Continued) "14-3-8. All requests for transfer on call in the Superintendent's office shall be destroyed on October 31 of each year. All renewals or new requests for transfer must be filed on or after November 1 of each school year.

"14-3-9. Nothing in this article shall prevent a teacher from requesting a transfer at any time.

"14-3-10. On or about June 15, the Superintendent shall make available to the Association a system-wide schedule showing names of all persons who have been transferred and the nature of such transfers. A supplemental listing of transfers and their nature shall be made available to the Association by the end of August."

Q. Now, Mr. Johnson, you have covered the part of this agreement relating to transfers requested by teachers, have you not? A. That is correct.

Q. Now, then, isn't there a section covering transfers that the administration wishes to effect? A. Yes, sir, and this refers to Article 14, Section 4, following immediately after that, my previous statement, and this is, "Transfer Requested by Administration."

The Court: I think I will let him summarize this.

[376] Mr. Greiner: I don't think I would even object to that, Your Honor.

Q. If you would, then, please summarize how administration-initiated transfers work. A. Yes, we have some situations where the administration may request a transfer. A good example of this would be that the enrollment or the membership in a school should be less than our anticipated membership for that school and it is necessary to transfer from a school to another school because we have overstaffed a particular school. There may be other reasons, but this is the one that is most common, and in this respect, if this is to be for the following school year, then this should be done prior to June 1st. However, a provision is given that if we find the emergency situation in September we still reserve the right to request transfer of the teacher. Then the transfer will be made only after a meeting between the teacher involved and the Superintendent's designee, and at this time the teacher must be notified regarding the reason that we requested his transfer.

In the event that the teacher objects to the transfer, then he can immediately notify the Association, and then the Superintendent or his designee will then meet with the teacher and the Association's representative to discuss this matter, and, of course, this discussion is [377] necessary or it could become a grievance filed by the teacher and the Association.

Now, at the time then, after it is discussed with the teacher, if it is agreeable, then a list of all open positions at that time must be available to the teacher, and then the teacher may indicate in the order of his preference the school that he wishes to be transferred to. So, really, it provides that this teacher cannot be taken from one school and said that the teacher is now in School A. He is convinced that there is a legitimate reason for his trans-

fer. So, he acknowledges that. But we cannot take him from School A and move him directely to School B without giving him the other possible schools where we have vacancies for which he is qualified.

If there are three schools requesting the same qualifications, there are three vacancies, we must give him the opportunity to go to School B, C or D, as the case may be, and he then is entitled to make his choice.

Q. Turning back to the transfers initiated by the teacher himself or herself, does that impose any limitations or qualifications on the administration's ability to make a determination of where the teacher goes? A. You will note in the wording that it indicates the qualifications of a teacher. You will also recall that [378] earlier I stated for the best interests of the school district. To the extent that we do give a feasible answer to that teacher regarding the transferring of one teacher over another and explain that we think it is for the best interests of the program, we do have or are empowered to do this, but not without answering to the teacher or if necessary to the Association, if they object that we are dealing with the teacher unfairly, but it does give us the privilege of transferring —of indicating to the teacher to go to a certain school.

Now, of course, if the request is made by the teacher, then, of course, that first section does not apply, because this is only where the teacher requests.

Then, of course, he requests for a specific position.

Q. Then, are teacher preferences a factor in determining who gets transferred where? A. It is a very important factor.

Q. Is teacher seniority a factor? A. Yes, that is written in the agreement, that seniority shall prevail, assuming that all other qualifications are similar.

Q. Was that seniority feature in the previous policy, 1617-A? A. It referred to it, but it is not as direct in [379] the statement. It is referred to that seniority shall prevail, and that has been the practice and procedure for years.

Q. Now, Mr. Johnson, when you finish up this transfer process, the dates you have indicated it happens, is there a time during the school year when there are unfilled openings that need to be filled with teacher personnel? A. Yes, if you will note that we attempt to fill these vacancies upon request of teachers prior to June 1st, so there is a period, really, that extends from June 1st to about September 1st, and in unfortunate years may even extend to the first day of school. But we have been fortunate in this respect, and during this period of time we had these vacancies that are a result of retirement and resignations and some unusual situations where we may have vacancies during the summer, and, then, of course, these are the vacancies that have not been requested for filling by the staff who were there during the previous year.

Q. Are projected enrollment changes a factor? A. It is not only overall projected enrollment changes, it could be projected enrollment changes in each of our 116 schools, because very often the mobility of population can affect a school as much as 50 to 60 pupils [380] just through the movement and the transiency even within the city.

Q. Now, how do you go about filling these vacancies? A. These vacancies must be filled by new applicants and teachers who are hired. Some of them are hired in the spring of the year because we anticipate from year to year so many vacancies. Some of them must be hired during the summer months, if we have failed to fill these positions or the estimated positions.

Q. During the last several years, Mr. Johnson, what has been the size of this new teacher assignment matter? How many teachers? A. It is necessary for us to hire from 500 to 700 new teachers each year. We have roughly a turnover in our staff for an average of from 12 to 14 percent a year, which is quite consistent with other large cities in the United States.

Q. Do you know anything about the extent of experience of these new teachers you must bring into the system each year? A. Yes.

Q. All right. A. As far as experience is concerned, and I will have to give the approximate number, although I am within [381] one or two percent, on the basis of our elementary teachers. Approximately 42 percent of those teachers have had previous teaching experience, one or more years. In the secondary schools, we find that the experience—we do have a higher percentage that runs approximately 39 percent of our new teachers have had previous teaching experience.

Q. Would these be classified in some of your classifications as teachers without previous Denver Public School experience? A. That is correct. As far as listing these teachers on the basis of experience, we usually list them as having previous Denver Public School experience. The experience gained outside, we do not count this in our normal format of indicating experienced or inexperienced teachers, and these individuals are given benefit on the salary schedule for a portion of their outside experience, but they are not listed as experienced Denver Public School teachers.

Q. Do you know anything about the extent of the non-Denver experience of these 39 to 43 percent that come to you having had experience? A. I personally do not have,

but in the personnel services staff there is a very close examination of this previous experience in regard to recommendations made by [382] previous administrators as well as the subject matter area, extracurricular activities, sponsorship, and all of this type of evidence does come to members of the personnel services staff.

Q. In regard to these new teachers, what is the School District looking for in the way of new teachers today? A. We are looking primarily for individuals who are sympathetic with children, understanding of children's problems, their ability to be able to discipline with reason, have the necessary control over the individual, be able to work within the community and to work—and their ability to work with parents. And, then, of course, in addition to this, and we have to recognize the necessity of the most modern teaching methods and also their knowledge of subject matter in a particular area.

At this particular time, however, we have come to the conclusion that probably the knowledge of subject matter and this type of skill is important, but it is not as important as the sensitivity of a teacher in working with children.

Q. How do you seek out teachers with sensitivity or training in sensitivity? A. Well, of course, we have quite an extensive recruiting program, starting about the first of December of [383] the previous year, in hiring teachers for September, and this continues with a great deal of vigor and force until about the first of May, and very often we are able to hire the bulk of these people by April or May, and, of course, in attempting to gain these, these are all personal interviews.

Contrary to what is done in some areas of employment, we do not consider a teacher an applicant until such time as he has been personally interviewed by a member of our

staff, has submitted even prior to that interview his transcript of record, his recommendations from his previous employer, and all of the data submitted to our office.

Then the personal interview takes place and at that time he is considered an applicant, and then it is pretty largely a comparative matter of determining upon the basis of the personal interview as well as the materials—it is a comparative matter of selecting these roughly five to six hundred teachers—it may vary from year to year—out of somewhere in the neighborhood of about 3,000 of these formal applicants.

[384] Q. Has the school district done anything through the source of these newly-trained teachers, the teaching colleges, to improve what you're seeking? A. Yes. In fact, this, I think—I think this is brought pretty definitely to our attention on the basis that there are certain things we are looking for in teachers today that were not requirements for an education degree.

Many of us who have been in education over a period of years, we receive quite a heavy dose of methodology, should we say, and subject matter. And I think the institutions of higher learning went on for years overlooking some of the important things, sociology and many of these things. And we made it a point a few years ago to contact 55 institutions of higher learning with whom we had had our greatest contact requesting certain types of courses to be put into colleges. We also requested that we needed to do more from the standpoint of practice teaching or student teaching in having these individuals work with a lower socioeconomic group, the culturally deprived. And I am happy to say that—and we haven't gotten 100 percent on this—but we have found very close cooperation. For instance, the student assigned by the Denver Public School

System by institutions of higher learning in this state—the majority of them are now doing their student teaching in so-called target area schools.

* * * * *

[391] Q. Specifically in the area that we have just been discussing of teachers Mr. Johnson, I refer you to Page D8 of this Exhibit 20, at the top of the page. Would you read that—or let me ask you, is the recommendation there, No. 2, one that fell within your responsibility? A. That's D8, No. 2. "A minority background should be considered as an asset in the recruitment of teachers in the Denver Public School System in that larger number of well-qualified teachers of Negro, Spanish-American and Asian backgrounds; standards of training, personalities, and abilities shall never be lowered or raised because of a minority background."

Now, Mr. Johnson, has the school district and specifically your office responded to that recommendation? A. Yes. We have responded to this recommendation. I think it is evident in this respect. The increase in the number of minority teachers that we now have in the Denver Public Schools. Number two, the emphasis that is placed upon recruitment of teachers in minority background and this particularly is making certain that we have a very close coverage of those institutions in the United States which have a large Hispano group in the college or university.

Number three, we moved further than just making contacts with the institutions of higher learning where we knew there were a large percentage of Negro and Hispano [392] students. But we moved deliberately into about 12 of the large Negro universities and colleges in the South. And then, also, utilized members of our own staff—our staff who were Negro or Hispano to make these contacts.

Q. Was Mr. Cruter involved in this? A. Yes, Mr. Cruter was primarily involved in recruiting with the southern universities and colleges.

Q. When did this response commence with respect to the 1964 recommendation? A. It really commenced in 1965 for the September recruiting because, as we went through these 155 recommendations, we put—we began implementing immediately those that we felt could be handled in this respect and we substituted in our recruiting plans, we substituted other people to make these recruiting trips. We also substituted other—certain other schools and eliminated some that we had not been quite as well successful with in our recruitment in order to achieve all of these 155 recommendations.

Q. Since 1965, do you have any evidence or measure of results in that regard? A. Yes. We have evidence in this respect, that at the present time we have in the Denver Public Schools approximately 400 certificated employees, that is, teachers who are of the Negro group. We have approximately 100 who are of the Hispano group. Roughly 50 to 75 orientals, and [393] so this would total altogether somewhere in the neighborhood of 575 to 600 individuals of these ethnic groups.

Q. That's as of now? A. As of this last September.

Q. How does that compare historically since 1965? A. In 1965 we had approximately 275 to 300 Negroes. The Hispano group was approximately 50, and oriental group was about the same. So I would say there has been an appreciable increase in those numbers.

Q. Mr. Johnson, would you read the next recommendation on Page D8? It's No. 3. [394] A. Accredited colleges and universities throughout the country, not merely those close to Colorado, should be objects of a more aggressive recruitment effort.

Q. Is your previous testimony a fair description of what you did to respond to that? A. Let us say in this respect it was fair, that we did try to move in the areas, thinking of the recruitment of the minority group. We did extend our boundaries for recruitments slightly, but not extensively. We extended slightly in the East going into Indiana, Ohio, Illinois, and then we did move in the direction of making more contacts with eastern universities and colleges, and this was tied in with professional meetings of our group.

Then as far as the South is concerned, I have explained that. We have previously recruited in the Midwest to a great degree, and we did go into New Mexico, Arizona and Utah and recruited there. We have studied very closely the matter of recruitment in California, Oregon, Washington, and also the far East. This matter—

Q. By that, you mean the eastern states? A. Eastern states, yes, sir. Now, in this particular business, this school business is very similar to private industry. It is a law of supply and demand, and I think we must be careful that we are not wasting a great deal of recruiting money going into places where we know we may be [395] outbid already on the basis of a thousand to two thousand dollars on the beginning salary. However, as the reports will show, we do hire many teachers, quite a number of teachers, from California. We do hire some from New York State, and so on, but we have been concentrating upon more in the Midwest, the Rocky Mountain area, and the South and our Central states.

Q. Do you have any other data or indication that this recruitment has produced a more geographical diversity in your input? A. Yes, it has that, and I think part of it is due to the recruitment. However, I think a great deal

is due to the fact that we send out a great amount of literature. Every institution in the United States gets our literature, even though our recruiters aren't there. Last year, as I recall, in the teachers we recruited last year they gave us their home addresses, that is their place of residence, and we recognized some of this may have been the parents and they moved on to teach for the year, but 46 states were represented and Canada was represented; so we have teachers who indicate that their homes are in 46 out of the 50 states.

Q. Mr. Johnson, would you read the next recommendation of the study committees, number 4? A. Yes. "The administration group in charge of recruiting teachers should include representatives of minority [396] groups in Denver," and this—

Q. Let me ask you a question, Mr. Johnson. You have mentioned, of course, Mr. Cruter alluded to his activities. In addition to that, has the administration taken steps in '65 to respond to that? A. Yes. we have, by using both Negro and Hispano recruiters.

Q. And in terms of comparative numbers between now and '65, has there been a change in the numbers of minority persons involved? A. In recruiting?

Q. What? A. You mean in recruiting?

Q. In recruiting, yes. A. Well, it has increased definitely on the basis of total number. Unfortunately, we have not used—we have not used the minority group prior to that particular time. There were one or two reasons for it, and pretty largely that we didn't have the manpower and we hesitated a great deal in using individuals who were assigned to the other jobs. We were using specifically the personnel people.

Q. Have minority recruiting personnel proved effective? A. Yes, I think they are effective. I don't think [397] that we need to look at it particularly from the standpoint of numerical value on the basis of numbers as much as it is the fact that I think the image is going out that we are interested in top-flight minority group teachers, and I think that this is paying dividends. I think that as Mr. Cruter told me he found that his trips into the South are more valuable—

Q. That would be hearsay. A. That would be hearsay.

The Court: Well, he told us that.

The Witness: That's right.

Q. Would you turn to page D-10 of Exhibit 20 and read the recommendation that appears at the bottom of that page. A. "The Board of Education and administration should work actively in concert with other school systems throughout the country to impress upon teacher training colleges the importance of preparing teachers to teach all children, including children of different ethnic and racial background, and the type of child we are characterizing here as disadvantaged culturally. It should be made clear that such training should be a plus factor in selection in the Denver system."

Q. Was this recommendation part of your responsibilities? A. Part of it. A dual responsibility along with [398] the Assistant Superintendent for Instructional Services, Dr. Hinderman.

Q. Do you know what response the administration of the district made to this? A. Yes, in this respect, that Dr. Hinderman and his associates contacted these institutions of higher learning and discussed the background in regard

to the offerings of colleges and universities for prospective teachers. We likewise, as we sent our people on recruiting trips, met with deans of colleges as well as the placement directors to discuss this matter of the necessary training of teachers to be better fitted to work with the culturally deprived.

Q. Do you see any evidence of results of this program? A. Yes, I see evidence. Again, you may indicate this as hearsay, because this is difficult to measure from the standpoint of any valid tests or measurements, except this, that we do get the report from our principals and we also are receiving from the community generally, parents and others, the quality and understanding of many of new teachers—

Mr. Greiner: Pardon me, Your Honor, I think I will object to this question on the basis of hearsay, what reports he has received from other people.

[399] The Court: Overruled.

Q. You may proceed. A. I think I have advanced my point, and that is on that basis.

The Court: Reports have been good. Go ahead.

Q. Mr. Johnson, you indicated that your—or, let me ask you this, have your duties involved any responsibilities with respect to the use of mobile units in the school district? A. In this respect. that is, the department of personnel services has the responsibility of working with budgetary services on increasing enrollment and so forth. To that degree, why, we did have the responsibility of recommending to the Superintendent the need for some means of al-

leviating the crowded conditions in certain schools and there to that extent. However, the bulk of the responsibility of purchasing and so on is in the division of planning and engineering, and in these cases the result of a recommendation of the Superintendent and the other staff members regarding the needs.

Q. Do you know when the district first started using mobile units? A. I would say about 1962, as I recall, the first year of the mobile unit. '62 or right about that time. I am inclined to believe—I would say '64, because I think [400] that Dr. Armstrong had a part in the purchase of those, so I think it was later, and he took office in '62.

Q. Mr. Johnson, I will hand you Plaintiff's Exhibit 101, which has been received in evidence. A. That's right.

Q. Do you happen to be familiar with that display? A. Yes, I am, and I note that my date was correct, 1962. Yes, I am acquainted with this.

Q. Are you familiar with the study committee's recommendation with respect to mobile units, which came two years later, obviously? A. Yes.

Q. What was the recommendation? A. Their recommendation largely was that they indicated that mobile units were a possibility and that we should—we should move in the direction of utilizing any means to relieve what they considered to be crowded situations in certain schools.

Q. Now, this Exhibit 101 indicates that mobile units were in the first year of employment sent where? A. The first year they were sent to the following elementary schools: Doull, Wyatt, Wyman, and Greenlee.

Q. That was 1962? A. That was in 1962.

Q. What was the next year they were installed? [401] A. Then in 1964 then there was a movement of some of

these because they were not necsseary, and there was also a purchase of some additional units, and sent to Philips, '64, and in 1965 to Smith School, and then also in late '65 to Park Hill School, and also Hallett School.

Then, we found that the decrease in enrollment in certain areas made it possible to move some of these. For instance, Doull School that had received the first mobile unit, we were able to move that to Eagleton to offset an increase there, and also in 1967 it was possible because of a lower membership at Hallett Elementary School to move two of those units to Ashley Elementary School.

Q. Has the use of mobile units given you any additional flexibility? A. Well, yes, it does. I think probably taking the first school on the page, Doull School was a very good example, and we had a heavy membership at Doull School. It was predicted that Doull School membership would be reduced, and our predictions proved to be correct, and so consequently on this particular basis we did not go to the expense of an extra classroom and so on, and we were able to utilize that mobile unit in other schools, and so there is this flexibility, and it may not only be on the basis of membership. It could be on a special program flexibility.

The Court: These units are single classrooms?

[402] The Witness: Pardon, sir?

The Court: Are these units single classrooms?

The Witness: Yes, they are single classrooms.

The Court: What are they, prefabricated?

The Witness: Yes, prefabricated.

The Court: They can be disassembled and moved somewhere else?

The Witness: Yes. It is not quite as simple as that because there is the matter of electricity, the

various utilities, and so on. So it is not quite as mobile as we normally think of a house trailer.

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[403] * * *

By Mr. Creighton:

Q. Mr. Johnson, as a matter of fact, I was about to ask you about these mobile units and to describe them. Are these classroom facilities? A. They are classroom facilities built purposely for this particular use.

Q. Do you know how satisfactory they are for this purpose of classroom units? A. We are in the impression that they serve very satisfactorily; at least, the reports that we get from teachers that use them, that generally they are well satisfied with them.

The Court: I take it that they are an interim facility that you utilize until your plans materialize to build new schools; is that right? Until the population becomes set in an area so that you know what your needs are going to be?

The Witness: That's correct, Your Honor. They are a temporary facility and for flexibility purposes.

Q. Do in fact these units have any advantages over other types of classrooms? A. I think probably teachers and pupils that wish to be isolated from the run of the regular school, the hallways and so on, that this would be an advantage.

[404] Q. Do they impose any limitation in class size? A. Only to this extent: that they are set for the normal class size, and normally the pupils—the number of pupils in these particular facilities usually number 25 to 30 pupils

and they handle that particular number very well. They do have air conditioning. They have the necessary public utilities that are necessary in close proximity.

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[408] * * *

Q. Please refer to Exhibit 20 at page D-14, Dog-14. Please read Recommendation 1 that appears on that page. A. "The Board of Education should establish and enforce a policy that qualified teachers of minority backgrounds will be assigned throughout the system."

Q. Now, was that recommendation assigned to you? A. That would have been assigned to me as Assistant Superintendent for Personnel Services.

Q. Do you know what the School District has done [409] since '64 to respond to that recommendation? A. The Superintendent, the previous Superintendent as well as the present Superintendent, has indicated that we should move in this particular direction, and we have to the best of our ability, assigning teachers of minority backgrounds throughout the system, and as of last fall we had a minority teacher in every secondary school and minority teacher in 77 out of the 91 elementary schools.

Q. So the interaction of your policy and the teachers' agreement impose any limitations on what you would otherwise do here? A. It would impose this limitation on an individual basis, but I don't think that it would impose it from the standpoint of the overall mass movement of any type. It can be realized that the agreement does indicate that if the administration requests the transfer of a teacher, the teacher is in position to question the transfer, so it places that limitation on it.

Q. Since 1964, has there been measurable—

The Court: Well, other than this, you just assign them without regard to whether they are minority people or not in the various parts of the town?

The Witness: Yes, we do. However, in the case of transfers it is necessary that the teacher request the transfer. That is, unless we go to the teacher and—

[410] The Court: Well, I think we ought to focus on the evidence. We have evidence here that these people are unduly concentrated in some of the Northeast Denver elementary schools particularly.

The Witness: Your Honor—

The Court: I mean, we had a good deal of evidence here the other day. I don't know if you were here or not. Is there a tendency of this kind?

The Witness: Yes, Your Honor, this is correct in this respect, that there are many of these Northeast Denver schools that have a greater number of Negro teachers in these schools than we do elsewhere in the city, and then as far as the distribution of these teachers, as I spoke, in 77 of 91, this is a matter of one or two teachers being in those situations.

Now, the point I am making is that we are stressing a greater distribution of these teachers throughout the city, but it is necessary that any teacher who wishes to be transferred to any other part of the city, of course, must do this pretty largely on the basis of this agreement and request such transfers. We had not had a large number of requests in this direction.

The Court: Well, my question is, why, if you pay no attention to whether these teachers are mi-

nority, they end up concentrated in Barrett and Stedman and these [411] other Northeast Denver schools?

The Witness: I think part of this is due to we have a greater turnover of teachers in those particular areas, and then as far as the reassignment of teachers are concerned we do discuss with teachers regarding assignments and we find that sometimes there is a reluctance on the part of the Negro teachers to want to go into other schools. However, we are having a better success in this respect than formerly.

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Q. Please read Recommendation No. 4 on page 214.

[413] • • •

Q. Please read the next recommendation, No. 5 on that page. A. "After a transitional period, during which the other recommendations of this committee are implemented, particularly with respect to training in human relations, no teacher, probationary or permanent, should be assigned to teach in a school containing substantial numbers of culturally-disadvantaged children unless his preparation, experience and/or personal qualifications demonstrate the probability that he will be successful in teaching culturally-disadvantaged children."

Q. Do you know what the district has done in response [414] to that since 1964? A. I would say that the district has attempted to meet this. Although, again, I think it's—the statement is so worded that no teacher should be assigned to teach in a school containing substantial numbers of culturally-disadvantaged children, I think it would stand to reason that I would have to indicate that on the

basis of assignment, there may have been some misassignments or—remember, that we have so many new teachers, and consequently it may be that when we make a statement that the individual, his preparation, experience and personal qualifications—now, it's entirely possible that his personal qualifications would thus demonstrate this but on the basis of preparation, experience and so on that this teacher may have had—

Q. When you speak of assignment, you're speaking of this input each year? A. That's correct. So, as I say, I don't think you could say that all teachers assigned here have all three of these qualities anymore than they would have in assignment in other parts of the city. I would say that it's the attempt to look very closely at these pepole who are assigned in a culturally-disadvantaged area or in any other area of the city.

Q. Do you make this same effort of screening, I suppose in the case of transfers—in negotiating and discussing [415] transfers? A. I would say a greater effort is made at the time of the placement of the teacher when he is new than on the basis of transfer. But an attempt is made in both cases.

Q. Would you please read No. 6 on D15? A. "A systematic program should be established by the administration to encourage teachers in schools attended by culturally-disadvantaged children and to emphasize affirmatively the personal rewards and satisfactions gained by teachers who work in such schools."

Do you know if any response has been made by the district to that recommendation? A. I would say that a response has been made but a great deal more needs to be made. I think the greatest response in answer to that

recommendation has been made through our workshops and school community relation programs of various types and where contacts have been made with some four or five hundred teachers during the year through our school community—our Department of School Community Relations. I frankly think this must be a concerted job of all teachers as well as administrators. We did meet with teachers in this particular area, the city, a matter of two years ago, working with Mr. Cruter in school community relations to see what we could do to build up the advantages in working with these children.

[416] Q. Please read the next one. A. No. 7, "In policy statements adopted by the Board and by the administration, it would be made clear that teacher preference as to assignment is subordinate to other criteria and that each qualified teacher in the system is expected to be able to teach and to be prepared to teach in any school where the administration thinks he can be most effective."

Now, Mr. Johnson, that speaks of the word assignment, which I believe in your context means the new teacher to the district. A. That is right.

Q. Where you don't have a transfer situation and teacher preference involved. A. Uh-huh.

Q. Were new teachers who are strictly speaking assigned —has the district responded to this suggestion? A. Responded in this manner. That probably the assignment of teachers is probably more a personal matter working with the individual teachers and discussing their assignment as they move than it is to just bluntly assign them in a particular area. For instance, at the time that we recruit teachers we do not give the teacher any indication of a specific assignment. We are assuming that we are recruiting teachers—

[417] The Court: I think what was asked is whether the Board has abided by this recommendation, that is, in respect to laying down policy. Isn't that all the question is?

Mr. Creighton: Yes.

Q. Has this been made a part of a policy—a formal policy? A. There is no formal policy in this respect, as we speak of a formal policy. But it is a practice, and the Board of course is very interested in this type of assignment as is the administration.

Q. Please read No. 8. A. "Teachers should be assigned or transferred to the elementary or secondary schools with major consideration given to their qualifications for teaching at a certain level."

Q. Now, did this require any change in practice? A. I think that it required a change in this respect; that there was a closer examination—probably on major and minor subjects. It is very interesting—we have some cross-overs between elementary schools and particularly on the basis of homemaking teachers who have had a major particularly in childhood education and so on. And I think it has made the Personnel Services watch more closely the qualifications and credentials of these people. When [418] teachers apply, they do this very often—they realize that there is a greater turnover in elementary education. The teacher may be primarily qualified in a subject area in secondary schools but may make known, where we ask the question in what particular level do you wish to teach, they make the statement, elementary. Then I think there was a tendency, that as we looked at the credentials, we found out they were qualified for elementary, that greater care should have been given in this respect, and I think the fact that this was

brought to our attention, I think this—I think there has been a closer scrutiny from the standpoint of those credentials of individuals who may have had some background who were qualified in elementary but had not necessarily taken their undergraduate work in this respect.

Q. Please read No. 9. A. "So that it will not be used as an excuse for careless placement or perpetuation of assignment, contrary to these recommendations, the residence of a teacher should have nothing to do with assignment except in unusual cases."

Q. Has there been any response to that recommendation? A. I think, so far as assignment of teachers are concerned in the Denver Public Schools, that is, the original assignment of teachers, I don't think there was too much violation of this and probably when teachers had indicated a preference, and where they seemed well qualified, I think [419] the teacher was given a little bit the benefit of the doubt. However, there have been very few instances. However, there have been some unusual cases where a teacher may be assigned close to a home situation. But this is not our practice. In fact, if this comes up as a reason for a request for transfer, it is usually not granted.

Q. The next recommendation deals with teacher aids. Had you been using teacher aids prior to the recommendation? A. Very few teacher aids were used prior to this recommendation. This is partly due to two things, one was—it was pretty largely a matter of finance, and I don't think at that particular time that we were sophisticated enough to use teacher aids. However, I do think that as a result of the inroads that were made by the use of federal funds, in which we were able to get certain types of aids in working with the teachers themselves in community work, we did set up certain criteria for the use of teacher

aids. So, whereas, about 1964, we had practically no teacher aids, we have right in the neighborhood of 400 now. These are used in direct aids to the individual teachers, are used in the playgrounds, lunchrooms, hall duties various types of assignments; audiovisual aids. So in this respect this is being implemented and we believe that it needs greater study because not only— We are utilizing teacher aids to the best of our ability through no fault of the [420] teachers or the principals—but I do think it does need additional work. But the administration and the Board both concur that this is a direction we should move. But it is comparatively new, not only in Denver but in many school districts in the cities—or, the United States. Excuse me.

Q. Please turn to Page D18. Please read the first recommendation there. A. These are your recommendations to principals?

Q. Yes. A. "Principals should become familiar with the community resources, cultural background and socioeconomic conditions of the community in which their schools are located."

Q. Has the district taken any steps to respond to that recommendation? A. Yes, they have taken steps and I think this has been the move in the right direction. It was formerly assumed that principals of course would become familiar, but I think now the basis of again much of the work that has been done in our workshops for principals and others, that we are making strides forward in this respect, particularly in community visitation and so on. But there was one that not only appears here but appears elsewhere in this report, but this is one that—that we are striving very [421] diligently to make the principal recognize that this is an important responsibility for him.

Q. Please read the next recommendation. A. "In addition to human relations training, principals as a prerequisite to assignment should have demonstrated a capacity to respect, to understand and to communicate with children and parents in more than one type of neighborhood."

Q. Now, what did that mean and what, if anything, did the district do? A. I think that probably what is meant on this,—as you know of the committee report, it was pretty largely this, that very often principals were assigned to a greater degree on the seniority basis, and I don't think they were as concerned about the children and the parents in any more than one type of community. I think there was a tendency prior to the assignment of principals of various ethnic groups, that is, a greater number of them that here were principals who had served primarily in a white community, with administrators, but were assigned to communities where other ethnic groups were the major groups, and they didn't prove to be successful. And this is an emphasis upon that very thing; that they should have this background and that we should take particular care in respect to these assignments, and we have attempted to do that, and it's been done in a number of ways. We have a greater number of minority group [422] principals, administrators and so on, who do understand these problems much better and likewise I think, as a result of the answer to the previous statement in the service training workshops and so on, I think we are developing a greater supply of people. But, this was a very emphatic thing on the part of the study committee and we are certainly looking at this.

Q. Please read recommendation No. 3 at the bottom of that page. A. "The job responsibility of principals in elementary schools particularly in schools where substan-

tial numbers of culturally-disadvantaged children attend, should be analyzed and assistant principals with qualifications similar to those recommended for principals should be assigned in order to permit the principals to give ample supervision and assistance to teachers."

Q. Did the district implement that recommendation? A. Implemented it in this respect; that the job descriptions for all administrative personnel was received after this particular report and it is not only a matter of review and job descriptions at that time, but upon the advent of a new superintendent a matter of two years ago, it has been reemphasized that this entire matter of job descriptions, the entire responsibility of staffing the individual school now is being looked at again.

[423] Q. Please turn to D21 and read Recommendation 2 and then please tell us briefly, because I think you have touched on it before, what the district is doing there. A. "As rapidly as possible all administrative personnel should participate in training in human relations. Such training should be an important consideration in all future appointments to administrative positions."

And, as you indicated, I did touch upon this before. And it has really been given very serious consideration as we appoint new administrators in the Denver Public Schools.

Q. What techniques or devices do you use for this? A. You are speaking now of the evaluation or are you speaking of the training?

Q. Of the training. A. The training is handled pretty largely through the Department of School Community Relations, working with a committee of teachers who are very interested in this area and we are requiring that principals and administrators attend such types of programs. In fact—and this is not only at the administrative

level of the principal; this is from the superintendent on down. The superintendent and his immediate staff participated in such type of workshops last—this last school year.

Q. What was that workshop called? [424] A. Mr. Cruter now prefers to call it more in the field of human relations, although it originally had the name of Sensitivity Training.

Q. Would you turn to Page E12 and note Recommendation No. 3. Was that under your responsibility? A. "Teacher should be encouraged to make more home visits with time allowed in order to work more effectively with parents and in motivating pupil learning."

So far as this specific recommendation is concerned, this really came through the Division of the Instructional Services because it pertained to the involvement of programs right within the school. But I do know that at least this was investigated a great deal.

[425] Q. And has it been stressed since 1964? A. It is constantly being stressed. In fact, this is a very important factor.

Q. This discussion of community involvement reminds me, Mr. Johnson, I neglected to ask you in connection with the mobile units, in determining whether to use mobile units did the administration consult with the parents in the area affected? A. In most instances, in fact, let us say this, the mobile unit was usually the means that was used to relieve overcrowding in a particular school and it usually resulted after a series of meetings with the school administrators, teachers and parents within a community, because the mobile unit became very closely related to the change in boundary lines, transportation or mobile unit or double sessions.

That is, it usually originated on that particular basis with the result that the mobile unit began to gain favor.

Q. Among whom? A. Among parents, administrators and others, in order to eliminate the double sessions particularly. That is, they did not wish the double sessions. And, of course, we were in position from the standpoint of the financing—this appeared to take care of some unusual situations. Some parents were aware of this and in nearly all instances [426] the mobile unit was then decided to be the most feasible, but usually with this one provision, we don't want them forever and be sure they are mobile and not permanent.

Q. Do you recall the limitation in the guideline that you read from the board motion guideline you mentioned? Do you recall a suggestion there about transportation? Was the use of mobile units considered as an alternative to transportation? A. Yes, normally these were lumped together. Very often it was transportation or double sessions, recognizing the mobile units are—that is, they are costly, and so, consequently, this extra class in this respect in the early days of the mobile unit, it finally came into the picture where it became another matter, and with the result that we found that the mobile unit in most instances appeared to be a better solution, that is at least in the eyes of the parents, than transferring the pupils from the school or going on the double sessions, so the mobile units I think became the lesser of what they considered to be certain evils.

Q. In your office, do you have occasion to know about individual school or building capacities and the ratings thereof? A. Let me say that in my office, in my office as assistant superintendent, I was acquainted with them, and as [427] deputy superintendent I also am acquainted.

This normally is handled through the planning and engineering, but I am generally acquainted with some features of this. But we must recognize that when we speak of building capacities we are going into detail other than just to say that a building is "X"—will handle "X" number of students.

Q. Well, do you know whether the district had rating capacities for its buildings? A. Yes.

Q. Do you know how these are arrived at? A. Yes.

Q. How? A. The rating capacities—and this is characteristic over the country in trying to establish a formula that is used, and that is on the basis of 30 pupils per classroom, and this is a formula that is used as a beginning to determine this, and as we use the so-called rated capacities, a building is listed on this particular basis, and normally arrived at on the 30-pupils-per-classroom basis.

Q. You mean that a building's capacity is as simple as this, that you count—its rated capacity— A. That's right.

Q. And you count the number of classrooms and multiply by 30? [428] A. Yes. We want to recognize here we are talking about two things. You are talking about normal capacity, in which you arrive at 30 pupils per classroom, and when I made the statement I was acquainted with it, this is the case. I am acquainted with it.

Now, whenever you determine the capacity of any building in this city, there are many other things to be taken into consideration, and, consequently, these are taken into consideration knowing that no school building will probably ever have the exact normal capacity; however, it is something to start with on the basis of indicating this is the normal capacity when we speak of a building generally.

Q. Let me ask you this, Mr. Johnson. The data that is available about our buildings as to capacity, is that the

rated capacity? A. That's what we call the normal capacity or rated capacity.

Q. That's the multiple— A. This is the figure 30 times the number of classrooms.

Q. It is nothing more than that? A. It is nothing more than that, because from that particular point it means that planning and engineering, the division of education, and others have to look very [429] closely at this building. It stands to reason that a building that was built in 1912 has certain peculiarities to that particular age than the building built in 1968. There are many things to be taken into consideration, and these are taken into consideration, and, consequently, we have the normal stated capacity which is very important for all of us to know, the formula type; but we must look very closely at this and it is possible that a building may have a stated normal capacity and, frankly, because of certain conditions and not only the conditions of the facility but the conditions of the educational program, that building cannot handle its normal capacity.

Q. Its rated capacity? A. That's right, and there are other buildings because of the type of programs and because of the structure of the building it is entirely possible that that building can handle quite favorably 8 to 10 percent more than that.

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Q. Mr. Johnson, I am going to get before you again Exhibits 33 and 34, which are subdistrict boundaries policies and pupil assignment policies, respectively, that have been introduced in evidence by the plaintiffs, and which bear on the general matter of subdistrict boundaries, and then I would like to have you pick up that '64 committee report, Exhibit 20.

Let me ask you preliminarily, to clarify this, did your office as assistant superintendent of personnel matters from 1960 until the revamping last year include matters relating to those two resolutions which I just handed you and the general matters of subdistrict boundaries? A. Generally, this Policy 1222-C relating to school district boundaries, we have looked at the various things we mentioned in the type, size and facility of this school, the pupil capacity of the school, school-age groups, [431] and so on. This policy emphasizes to a greater extent and brought in there at this particular time the ethnic and racial characteristics of the school population, making to the extent possible a heterogeneous school community. And then there is more stress upon the mobility and levels of educational attainment.

Q. More in respect to when? A. That is, this policy emphasizes this to a much greater degree.

Q. Why I asked— A. Than just the working guidelines we had formerly before this policy was adopted. However, the type and size of facilities at the building, the pupil population, natural features and the urban features and so on, were taken into consideration when we designed boundary lines in order to establish the membership within a given school to as great a degree as possible. However, it wasn't always possible to follow exactly on this and as a result sometimes we would have to forego some of the criteria in this respect.

Q. Well, Mr. Johnson, you have mentioned 1222-C. A. Yes.

Q. Now, as to 1226-B, when did that become effective? A. Policy 1226-B was effective on February 3, 1966, and this also came—these two policies—

Q. Is that A or B? [432] A. This is A.

Q. 1226-A? A. A.

Q. That became effective when? A. That became effective on February 3, 1966.

Q. And that related to what? A. These were outgrowths—

Q. No, the resolution or the policy relates to what matter? A. The assignment and transfer of pupils.

Q. Now, that policy and the other one were policies that your particular assignment as a superintendent required you to follow; is that right? A. That is correct.

Q. Now, please get out Exhibit 20 and turn to page A-6.

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[433] * * *

Q. Now, Mr. Johnson, please read that Number 1 recommendation on page A-6 of Exhibit 20. A. "The Board of Education should formally adopt the statement of policies which shall govern the establishment of school boundaries and the location of newly constructed schools and additions to existing schools. Two, the Board of Education should establish school boundaries in accordance with the neighborhood principle as herein described (subject to the exceptions stated in the committee's recommendation as to pupil transfer hereafter set forth.)"

[434] Q. Please, let's take these separately. Recommendation No. 1, was that in your bailiwick? A. That was in my bailiwick along with Recommendations to the Superintendent and other administrative staff members. They were done largely as the result of Superintendent's counsel working together.

Q. What did you do about Recommendation No. 1? A. There was a presentation to the Board on the basis of the policy that that's before us here, the establishment of school boundaries.

Q. And you read Recommendation No. 2. Did the Board respond with a policy statement? A. That is correct, that the Board responded that this policy statement as such establishes school boundaries in accordance with neighborhood principles as herein described and then with the exceptions that come a little bit later.

Q. Now, then, I am going to No. 3. Will you read that? A. "In addition to the unwritten rules which have heretofore controlled the establishment of boundaries and the location of schools, the adopted policy of the Board of Education in these matters should include acceptance of responsibility to minimize the effects of de facto segregation and the recognition that wherever possible and as a [435] matter to be considered of equal weight with guidelines presently used, boundaries shall be set so that the neighborhoods thereby established will represent to the extent possible a heterogeneous school policy."

[436] Q. Now, then, taking those three recommendations as a group, can you tell us what the school district has done to respond to those? A. In this respect the school district has established this policy and took it—as it refers here to the unwritten rules, which I have indicated were in existence before and established the ethnic and racial characteristics of school population, making to the extent possible—

Q. You're reading from what? A. I'm reading now from 1222-C, so the Board of Education in taking these unwritten rules that we had formerly operated under had moved in fulfilling the request of the committee, and inserting this particular statement upon the ethnic and racial characteristics.

Q. Now, then, Recommendation 4 on page A-7 of Exhibit 20, I think I can fairly say recommends that the

Board having adopted officially the written policy should review the validity of existing school area boundaries in terms of that policy. Was that done? A. You must remember that this policy now became effective on February 3. It was done on the basis of the last boundary changes that were made at that time—at that particular time. These particularly included George Washington boundary changes and so on. So far as a formal review of this policy, and being brought before the Board, [437] it has not been changed since that particular time. However, on the basis of changes in boundaries, likewise we have had no boundary changes as such.

Q. You tell us the boundary policy was adopted February 3, 1966? A. That is correct.

Q. Now, was there any interim policy statement to guide you in relation to boundaries between the receipt of Exhibit 20, this report, and the formal adoption of Policy 1226? A. You're speaking now of the 1226, Assignment of and Transfer of Pupils? Or, 1222?

Q. Well, Mr. Johnson, to refresh your memory, please look at what we have said is Exhibit 102, the policy statement.

Appearing at page 104 of Exhibit 21. What is that? A. This was the progress report to the Board of Education by the Superintendent, and on May 6, 1964, and this was a statement relating to the progress of recommendations of the committee, and in here various items were brought to the attention of the Board of Education for things that had to be done in this respect. Among those—

Q. What we're calling Exhibit 102, and what you have described as a progress report, does that contain a [438] general policy statement? A. No, in this particular exhibit it's a statement in regard to a summary of what's been

done about the recommendations relating to the administration and organization in which the optional areas were discontined.

Q. But on the first page of that, Mr. Johnson, it starts out, "General Policy Statement." I'm referring to Exhibit 102. It refers essentially to the first page of that exhibit. Are you familiar with that? A. Yes, I am familiar with this. This is a statement made by the then superintendent of schools, Dr. Oberholtzer, to the Board of Education as it conformed—

Q. What date? A. This was prepared on May 6, 1964. And the Board had accepted this statement.

Q. What does it relate to? A. This relates pretty largely to the attitude of the Board of Education and the Superintendent of Schools and his staff as it relates to the equality of educational opportunities and so on.

Q. Do you relate it to boundary lines? A. It relates to boundary lines in this respect; that it refers to the continuation of the neighborhood schools, has resulted in concentration of some minority, racial and ethnic groups in some schools; reduction of some [439] concentrations, and establishment of a heterogeneous and diverse group in schools desirable to achieve equality of educational opportunity. This does not mean the abandonment of the neighborhood school principle but rather the incorporation of changes or adaptations which result in a more diverse or heterogeneous racial and ethnic school population, both for pupils and for school employees.

Q. Now were you guided by this in your activities relating to the boundary changes in the adoption of Policy 1226-A? A. Yes. In fact, the superintendent and his staff brought this to the staff's attention constantly, that these were some of the things that we must consider in changing

boundary lines as it related to the neighborhood school principle. But, also, the necessity of a more heterogeneous population within these various schools.

The Court: Well, what tangible steps were taken to implement this number 3, this recommendation that there should be minimization to the effect of segregation? Did this just pass resolutions? Did they do anything about it? I mean, what have you got? What tangible thing can you point to?

The Witness: Your Honor, in this respect, to the boundary line changes—that came up after that, and relating to both the neighborhood school principle and in an [440] attempt to get more heterogeneous school population I think probably a good example of this would be the extension of the George Washington High School boundary lines further north. This happens to be one that came in, and whenever boundary line changes were essential, consideration was given to the two ideas, the one of more heterogeneous school population, and the second one on the basis of the neighborhood school principle which would appear to be in conflict, but it is one that had to be judged both ways. So it was utilized in the change of boundary lines.

The Court: Well, did you achieve any reduction in the segregation?

The Witness: Yes, using as a good example the George Washington change. This did bring more Negro students into George Washington. It did not bring a tremendous change in numbers but there were some slight changes made, Your Honor. But, not a tremendous change.

By Mr. Creighton:

Q. Referring to Exhibit 20 and the recommendations on A-7, Recommendation No. 4, I think I can paraphase that it urged you to consider—I beg your pardon—speaking now of 5, which is on page A-10. This one suggest—well, I'll let you read it because it is a little detailed. A. You're speaking at the botton of the page, now?

Q. Yes. [441] A. "The Board of Education should supplement its present transfer policy by the adoption of a plan of limited open enrollment generally in accordance with the procedures discussed above. The plan adopted by the school system in Detroit is suggested as a model."

Q. Did the district in fact create an open enrollment policy? A. Yes, such policy was created and adopted by the Board of Education.

Q. Is that particular policy still being implemented? A. Let's say that this is a carryover of the result of the limited open enrollment—this is still being implemented. For instance, individuals who had taken advantage of the limited open enrollment policy will continue in the schools in which they are registered if they so desire. So, to that extent. But, there are no new pupils in the limited open enrollment policy.

Q. Has this policy been supplanted by another? A. This policy would more or less be supplanted in this respect, that the new policy provides transportation for these pupils in certain schools.

[442] Q. What is the new policy called? A. The new policy is the open enrollment, rather than limited; whereas, the other was a limited open enrollment. This is an open enrollment with a transportation policy.

The Court: What does it mean?

The Witness: It means this; that wherever there is a space in any school in the city a pupil may request enrollment in that school with transportation provided by the school district if the ethnic—if the ethnic or integrated factor in that school is improved through the transfer; meaning that a child attending a predominantly white school may be transported to available space in a school that is predominantly Negro.

Q. Provided that school child is what race? A. Is of the white race; into the Negro school, or vice versa. So, whereas the limited open enrollment policy did not have the limitation of improving integration, the purpose has two new features in that it improves and must improve integration and secondly there is transportation.

Q. Now, is the mechanics of that—either of those enrollment policies—is that in your specific department? A. No, this would be in the Division of Education and under Pupil Services.

Q. Please turn to A13.

The Court: Well, as a practical matter, there [443] would be no openings unless students in these other schools desire to go to minority schools, is that correct? I mean, in the present crowded conditions of the facilities, as a realistic matter?

The Witness: Your Honor, in most instances, now with the overcrowding in the minority schools, it would be necessary for this transfer to be from the minority schools to the primarily Anglo schools unless we get sufficient number out of those schools

to provide vacancies for the white students to move in.

The Court: How about the Anglo schools? Are there openings in those schools, should minority people wish to go there?

The Witness: Yes, there are some available spaces in there. I'm not in a position to give you the exact number at the moment, because, as I say, this is in pupil services. But they have issued to the principals the number of spaces that are available in these schools and consequently the parents of those pupils may bid for those spaces and be transported and enter the schools. But, as you stated, the greatest problem we have now is a large pupil population in Northeast Denver where we do have predominantly Negro students. And this is one of the points that we have been working on. I think that Mr. Cruter did indicate the Hallett situation which is the only one we were able to work on until [444] such time as we have a settlement.

The Court: You're not going to finish with him, anyway, today, are you?

Mr. Creighton: I may be nearer the end than I think.

The Court: With that assurance, we will bear with you; that guarantee.

Q. I was about to ask you about that recommendation on Page A13. Would you just read that and tell us— A. "Optional areas should be fully eliminated at the earliest possible date."

And that was accomplished by resolution of the Board of Education shortly after this report.

Q. On Page B10, Recommendation No. 1. Please read it. A. "The principal policy of providing classroom facilities where they are needed because of increased population should be continued."

Q. Has that been followed as a matter of policy? A. Well, to this extent, to the extent that we have been able to provide the classroom space in those areas. Then, of course, we must refer back to a resolution which did affect the building of any new facilities in Northeast Denver. And so, consequently, that would have effect on this, although in some other instances, this policy has been [445] followed on the basis of population.

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Cross-Examination by Mr. Greiner:

Q. Mr. Johnson, as I understand it, on July 1, 1950, you became the Assistant Superintendent for Personnel Services. A. That is correct.

Q. At that time, who was your immediate superior? A. Dr. Kenneth C. Oberholtzer, Superintendent of [451] Schools.

Q. And there was a direct communication between you and Dr. Oberholtzer then? A. That is true.

Q. Now, what departments or divisions were under your supervision as the Assistant Superintendent for Personnel Services? A. Only the Department of Personnel Services as such.

Q. Now, as I understand it, that included employee personnel? A. Correct.

Q. And that includes teachers, does it not? A. Yes.

Q. Pupil personnel? A. Yes.

Q. And as I understand it, your responsibilities included the assignment of pupils and teachers to various schools? A. Yes, sir.

Q. And it also included the transfer of pupils and teachers from one school to another? A. Yes, sir.

Q. And it also included the establishment of school attendance area boundaries? A. Let me amplify that in this respect, that this [452] particular assignment was given to me in my office. However, the recommendation of school boundaries is made by the Superintendent and all staff members participated in recommendations to the Superintendent.

Q. Now, would that same comment hold true with respect to the establishment of optional zones of attendance? A. Yes, sir.

Q. So, you would work on that, in that area, along with Dr. Oberholtzer, is that correct? A. Well, Dr. Oberholtzer and any other members of the staff that he would assign to this, and it included other assistant superintendents as well as other staff members.

Q. Now, did your duties as superintendent with respect to personnel also include keeping track of school population? A. Only in this respect, that the Department of Budgetary Services made the necessary surveys and also kept the data concerning attendance and those were then referred to the Division of Personnel Services.

[453] Q. I take it then that when a school became overcrowded or became underutilized, that you acquired knowledge of that fact, is that correct? A. That is correct.

Q. Now, did your duties include the working of new schools into the existing system, the assignment of pupils to these schools? A. Yes, sir, this would be true.

Q. Did it also include the utilization of vacancies created when a new school was built and opened? A. That is correct. In consultation with other members of the staff.

Q. And it also included the placing of these mobile units, is that correct? A. This would be correct.

Q. And as I understand it, you also supervised the limited open enrollment program that was instituted in—When was that instituted? A. That was instituted in 1964.

Q. In September? A. In September of 1964.

Q. And that program also came under your department? A. Correct.

Q. Now, did you also administer the voluntary open enrollment program that was instituted in January of this year? [454] A. I assisted in this respect, as Deputy Superintendent at calls of meetings. However, this particular program now is under the Department of Pupil Services; that is, it's in the Department of Education. However, again, matters of this type are usually considered to be staff matters and there are many of us who were included. However, it is specifically in that department now.

Q. Now, you will recall Policy 1222C regarding school subdistrict boundaries? A. Yes.

Q. I take it the administration or the implementation of that policy was also under your jurisdiction? A. Only to the extent that the assignment of preliminary reports to the superintendent's office after consultation with other assistant superintendents would be submitted to the superintendent's office and he, in turn, would submit it to the Board of Education.

Q. Now, you also recall Exhibit 34 of Policy 1226A relating to the assignment and transfer of pupils? A. Yes, sir.

Q. I take it that that policy was also under your jurisdiction, is that correct? A. In the same manner as I stated for the other policy.

Q. Now, as to such matters,—well, take for example when a new school opened. How were the details of what students [455] were to go to that new school—how were those details developed? A. A new school being opened—there would be consultation with other assistant superintendents regarding the usability of that school. Immediately we would assume two things: one, the school is being opened in that area probably because it's a newly annexed area and has no schools. So, consequently, we would investigate the pupil population in that area.

If the school built in the city, beyond the annexations, then it undoubtedly was built because of overcrowding of other schools and then a survey would be made of the students living in the immediate area—geographic area who were attending other schools.

Q. Then I take it your staff would create a certain proposal for the filling of the new school, is that correct? A. That's correct.

Q. And that proposal then would be sent upward to Dr. Oberholtzer? A. That is correct.

Q. And except for boundary changes, was this same development of programs and proposals—was it always under your supervision by your staff? A. Yes, mine was more or less of a coordinating arrangement and I was held responsible to see that the materials [456] were pulled together and submitted to the superintendent.

Q. Now, as I understand it, you became the Deputy Superintendent of Schools when? A. In June, 1968.

Q. So then you were in your present capacity when the preparation of 1520, 1524 and 1531 was under way? A. I was Deputy Superintendent of Schools.

Q. And did you participate in the development of those resolutions? A. To the extent that the superintendent requested this. But most of these—the general work of the superintendent's preliminary report of a year ago of quality education fell pretty largely in the area of two other departments: one was the division of planning and engineering, and the department of research. And the director and assistant superintendent—or the assistant superintendent and director, respectively, of those two divisions and departments were held responsible for the coordination, and I participated as a staff member.

Q. I take it then you wouldn't characterize your participation in the development of these resolutions as being extensive? A. Only to the extent that other staff members who were called upon for assistance.

Q. Now, I also understand that until you became the Deputy Superintendent of Schools you were in charge of the [457] transfer of pupils and teachers from school to school, is that correct? A. Members of my staff were. I was the administrative head of the department. I personally did not make those transfers, but members of my staff did, and administratively, I was responsible.

Q. Did your duties include keeping track of the quality level at various schools; quality of the educational program? A. No, this—prior to this September, or really this September general reorganization, this came under the Division of Instructional Services, the quality of education; anything to do with the actual instructional programs in the school. Mine was pretty largely of an administrative nature and personnel.

Q. Do you ever consult with that division, oh, for example, relating to the question of teacher transfers as it might affect the quality of a particular school? A. Yes.

Q. I noted in the 1964 committee report which is Exhibit 20— Perhaps you would like to have that handy. There was a finding in that report, was there not, Mr. [458] Q. (Continued) There was a finding in that report, was there not, Mr. Johnson, concerning the assignment of teachers? A. Yes, sir.

Q. And did not that report also conclude that perhaps one of the reasons why there apparently were predominantly minority teachers in minority schools is the fact that some principals were hesitant in accepting minority teachers in their schools? A. I do not recall that statement being in the report.

The Court: What is that? Exhibit 20?

The Witness: Yes, Your Honor.

Q. I call your attention to Page D-13 in Exhibit 20, the last full paragraph at the bottom of that page— A. You are speaking of the next to last paragraph?

Q. Yes. A. It reads, "As a result of its interviews, the committee is convinced that race has been relevant in the assignment of teachers." Then it goes on to say, "It appears that the administration has been extremely reluctant to put Negro and Spanish-American teachers in predominantly white schools because of concern with the possible lack of acceptance on the part of a white neighborhood. In a realistic assessment of a possible lack of support by some principals and faculties—" and my point was that it [459] indicates that "it appears that the administration—" I thought that you had indicated this was the specific statement or recommendation.

Q. Well, now, I take it you are familiar with some of the problems that cropped up during this time period of assigning Negro teachers in Anglo schools, are you not?

A. That's correct, and I have recognized that problem ever since I became—since the period of time I became Assistant Superintendent for Personnel Services until leaving that assignment a little over a year ago.

Q. Do I mean to infer from your answer, Mr. Johnson, that you in the course of those assignments never ran across a lack of support by some principals? A. I never had a direct statement from a principal that he would refuse a teacher of a minority group. I do think that there have been—that it has been necessary for us to push to the extent that we could to get minority teachers or attempt to have at least one minority teacher in each school. We have also run into situations where the question of the number of minority teachers in a school was brought to our attention.

Q. In what respect? Too many or too few? A. In both instances. There are principals who have asked for minority teachers and because of transfer policies, availability and so on, we have not been able to place [460] minority teachers in those schools. There have been some problems existing that principals were aware that probably there were too many minority teachers in a school and attempts have been made to solve that, and we are still moving in the implementation of that.

Q. Well, let's look at the teacher transfer policies then, Mr. Johnson. As I understand it, from your testimony on Friday, Exhibit E, which is the Denver Teachers Association Contract, primarily now controls the question of teacher transfers. A. Yes, this is the policy adopted by the Board of Education in agreement with the Denver Classroom Teachers Association regarding transfers, so that, therefore, it is Board of Education policy relating to teacher transfers.

Howard L. Johnson—for Defendants—Cross

Q. Now, as I understood your testimony, Exhibit E expired some time in April of this year? A. Let us say this, that the agreement was signed on April 6, as I recall, 1967, with the provision that there would be an election to determine whether that association would continue as the recognized representatives of the teachers and in an election they were elected. However, now, as refers to the agreement, that there is a matter of negotiations that went on, and as a result of those negotiations this agreement was drawn up and ratified by the Board of Education, and upon that ratification it became [461] policy and that still continues for the time being until such time as the Board of Education makes any changes, and as a result of this summer's negotiations there probably will go before the Board of Education sometime in September or October for ratification, because the salary schedule is an important feature of the agreement.

Q. Am I correct in assuming that the teacher transfer portions of that contract are not being renegotiated? A. At the present time I cannot say whether there is any negotiation for a change in this policy or not. I am not in the negotiating session and, consequently, we have not come up with any specific tentative agreements, so in the meantime this policy prevails.

Q. Referring, if you will, to Exhibit E, Page 25, 14-2-1, on that page it talks about transfers which will result in the best educational program for the school district, is that correct? A. Yes, you are referring now to 14-2-1, did I understand you?

Q. That's correct. A. Yes.

Q. Now, I take it you have been administering the transfer of teachers under this contract, which is Exhibit E? A. The administration—however, this authority has

[462] been delegated to directors in division of personnel services and to the Executive Director of personnel services as of last September.

Q. Well, now, that would be a year approximately after this contract went into existence? A. That is correct.

Q. So, you have administered it for at least one year? A. Yes, at least one year, that is correct.

Q. Now, in your administration of this policy, have you considered it consistent with the best educational program for the District to transfer Black teachers from Black schools to Anglo schools? A. As it refers to this first statement, 14-2-1, remember this refers specifically to requests for transfers, and in this particular case it is a question of whether or not these requests will be granted.

Q. Pardon me, I believe you are in error, Mr. Johnson. These are general principals. A. Yes.

Q. That control transfer, are they not? A. They control transfers, that's correct.

Q. And transfers requested by a teacher are covered by subsection (3). A. That is correct.

Q. So these are general principals, is that correct? [463] A. That's correct.

Q. Now, what about the transferring of Black teachers from Anglo to Black schools? Do you have any policy about that? A. Black teachers from Anglo to Black schools? I don't think that the matter of the ethnic group enters in except in our desire to get a greater distribution of Negro teachers into the white schools. However, I think it would be consistent and certainly not fair to a Black teacher who happened to be in an Anglo school if he had sufficient reasons and so on that he should not be hurt. However, we would discourage this if at all possible and we have—I can think of only one instance at the present

time where a Black teacher was transferred from a Anglo school to a Black school. There may be others, but I am aware of one.

Q. And I assume that certainly one of the reasons for that policy is that there are in fact so few Black teachers in the Anglo schools, is that correct? A. Proportionately, this is true, and we are constantly endeavoring to get more Black teachers into Anglo schools.

Q. Now, Mr. Johnson, what about the transfer of Anglo schools to black schools? A. The same would prevail, but unfortunately we do not have many requests in this respect.

[464] Q. We are still talking about general principals, are we not, Mr. Johnson? A. We are.

Q. Now, then, if you would refer to Subsection (2) 14-2-2, I take it that—and, again, this is a general principal, is it not? A. That is correct.

Q. One of your general principals is to achieve a faculty which is well balanced, is that correct? A. That's correct.

Q. And the criteria are in terms of experience, general background and competence, is that correct? A. That is correct, and we are—

Q. Now, is a balanced racial composition in a school's faculty—is that an objective of your administration? A. It is one of the objectives, along with all the other criteria.

Q. It just didn't happen to be mentioned in 14-2? A. That is correct.

Q. Is distribution of minority teachers throughout the District also an objective? A. A distribution to the extent that it does assist in a better educational program. I could amplify it in this respect, that we recognize the fact that in schools that are predominantly Black we believe that we need a greater number [465] of Black teachers because

I think there's a better understanding in this respect. Now, the exact proportion is very difficult to arrive at and again I think this is very important. Likewise, in the Anglo schools I think it is exceedingly important that there be a minority teacher, not as much from the standpoint of direct contact with the students as the assistance that such teacher would give to other members of the faculty and better understanding of the philosophy of the Denver Public Schools as it works toward a better ethnic relationship.

[466] Q. Now, it also says the fact that it should be well balanced in terms of expense, does it not, Mr. Johnson? A. Yes, sir.

Q. Then why are there so many inexperienced or less experienced teachers in such black schools as Smiley and Cole, Barrett and Stedman? A. I think you are taking this on the basis of these general principles, and we agree on these general principles, but I think it is necessary to go into the entire Article 14 as it relates to transfer, and one of the reasons it is pretty largely this—

Q. Pardon me, Mr. Johnson, but my time is somewhat limited. You'll have an opportunity to be reexamined by your counsel. I believe you have answered my question.

Mr. Creighton: Your Honor, I think the witness should be permitted to fully answer.

The Court: Very well. Do you have something you wish to add?

The Witness: Yes, I would, Your Honor. I would like to add this: that we must recognize this agreement as a total agreement and consequnetly when vacancies occur in the Denver Public Schools through resignation or through retirement, all of

those known vacancies must be posted twice, in the spring of the year, in May and June. And any teacher in the Denver Public Schools has a privilege of making a [467] request to fill that vacancy and this is in accordance with the agreement, and it also states in this agreement, referring to Article 14-3-5, no assignment of new teachers in the school system shall be made until all pending requests for transfer have been processed. So consequently these teachers are not requesting transfer to certain schools in the district.

Q. The black schools, is that correct? A. That's right. I wouldn't say necessarily the black schools. I think probably there is a greater number in lower socioeconomic areas so I would not specify black schools as such. But I think they get established in a particular community and when these schools are listed, there is not a request for transfer. Now, consequently, after this first go-around of vacancies occurs, then we have additional vacancies and we have vacancies that are set up on the basis of the previous request for transfer. Now, again, the experienced teachers in the school system have an opportunity to request those vacancies which leaves us then with the only vacancies in the school system at the time we go into the summer months, which are many of these vacancies that have not been bid for by teachers. Now it is necessary to have manpower in those schools so, consequently, we do proceed then in filling those vacancies to the best of our ability.

Very often during this period of time we counsel with some teachers and ask them to fill certain spots so that we can [468] get this well-balanced staff. And sometimes we

are successful. Now, with these vacancies in the summertime it is necessary that we fill them with new teachers of the Denver Public Schools and in our attempt to equalize educational opportunities we do attempt to assign older teachers who have had experience in the outside—outside the city in the schools, but again, we are not as successful as we would like to be because we suffer the same in Denver as other large cities where roughly—under this there is turnover of teaching staff each year and this means we are handicapped in this respect.

So I thank you for being able to add this, but I think it is very important, that we assume that this article is taken in total rather than a portion.

Q. Now, I take it you did have my question in mind, didn't you, Mr. Johnson, and that was why such schools in particular, Smiley and Cole, Barrett and Stedman, have such a high proportion of black teachers. Now, I thought that the gist of your answer was that there were two points to it, the first, that there is a greater transfer out from those schools, is that correct? A. I would say there is a greater request for transfer from those schools and we attempt to control it to the best of our ability, but with this agreement it stands to reason unless we counsel the teachers—unless the teachers are counseled to remain—we do have an agreement with the [469] Teachers Association.

Q. You're not telling me you counsel the black teachers and ask them to remain? A. That we counsel with the black teachers to ask them to remain?

Q. Right. A. I wouldn't say we never do. I think there are some black teachers in certain of these schools that are almost indispensable to those schools because of their knowledge of the situation and the community and so on.

But we do counsel with some of them to transfer to Anglo schools where we are of the opinion they can be of assistance there.

Q. You also counsel them, as I understand it, with the experienced teachers in those schools and ask them to stay, is that correct? A. It may be the experienced teacher—let us say that we take all things into consideration—experience is very important in the teaching profession, but not always a most important factor for a specific teaching position.

Q. Well, for example, Mr. Johnson, isn't an experienced teacher better able to handle disciplinary problems that might arise in these schools? A. I wish that I could say yes to that. I don't think it's always true. I think we have some experienced teachers who do not do as well as first-year teachers in this respect. [470] I think it is generally known that experience would assist the teacher in this respect, having had certain situations before. But I would not make a blanket statement that experienced teachers are better disciplinarians than first-year teachers.

Q. Mr. Johnson, as I understand it, then, you try to get the experienced teachers in the black schools to stay, but you are not always successful? A. That is correct.

Q. And that is one of the reasons why we have lower teacher experience in the black schools, is that correct? A. I think this would be correct.

Q. And the other reason, as I understand it, is you do have these transfers out and you don't have as many transfer-in requests? A. That is correct.

Q. So you end up with vacancies in those black schools? A. (Nods affirmatively.)

Q. And the only personnel left to fill those vacancies just happens to be the brand-new teachers, is that right?

A. That is correct. Excuse me, if I may, but not only the transfer-outs, it's also the resignations from the teaching staff that I mentioned before, that adds to this particular problem.

Q. Now, I seem to recall your mentioning a statistic that [471] in the elementary schools the teachers with no previous DPS experience may be a misleading characterization, is that correct? A. I didn't say that it was misleading. I merely indicated that a first-year teacher in the Denver Public Schools is not necessarily an inexperienced teacher in the profession because, as we speak of probationary teachers, this refers strictly to Denver Public School experience. It would not include experience in other districts.

Q. Now, this experience could have been gained in any place, couldn't it; urban or rural, in other school districts? A. That is correct.

Q. And is there any reason to believe that the experienced portion of no previous DPS experience teachers in the black schools is any higher than it is in the white schools? A. I'm sorry. Will you repeat that, please?

Q. Well, as I understand it, some of these new schoolteachers are experienced. A. Yes.

Q. Is there any effort made to place these experienced new teachers in the black schools? A. Yes. There is the effort on the part of my position as an individual indicating to the executive director of Personnel Services that we should take a look at this background and experience and also the age element where it has [472] an opportunity to offset other qualifications. Also, in these schools, our Personnel Services people consult very closely with principals in those particular areas in there and assist to build a better staff in those areas, and I would say they are given greater opportunities probably in the selection of teachers than

other principals in the city. However, we are trying to strengthen even this. I think the principal should have more voice in the assignment of teachers in his school.

Q. Now, I take it you would have records which would reflect the fact that some of these new teachers coming into these black schools are in fact experienced? A. Yes, there would be evidence in their application blank and the recommendations and the certification of previous experience. We would have that.

Q. And you would have that for each of these individual schools we're talking about, wouldn't you; Barrett, Smiley— A. So far as teacher background, yes, we would have that.

Q. Now, as I understand it, teachers with seniority get preference as to transfer, is that correct, under Exhibit E? A. Let us say again, in accordance with this, teachers with seniority are given the preference. However, there are these other items in Article 14 that are taken into consideration. However, a teacher who has seniority has a perfect right to ask our Director of Personnel Services why they are not [473] given a transfer because of seniority and it is essential in accordance with that agreement that the teacher be given an explanation, and it may be for any number of reasons that the teacher is not transferred even though he may have seniority.

Q. Now, the seniority aspect—could that be another factor which leads to the result of less experienced teachers in black schools? A. Yes, I think the seniority factor would lead to this.

Q. Calling your attention then to Page 26 of Exhibit E, Mr. Johnson, Section 14-3-6, it speaks there in terms of considering the conveniences and wishes of the individual teacher, does it not? A. Yes.

Q. I take it that that doesn't reflect what might be called a neighborhood teacher policy, does it? A. Let us say this, that the statement here indicates that they will be honored to the extent they do not conflict with the instructional requirements and best interests of the school program. Let us say this, that a teacher who requests such transfer indicates to our Personnel Services that there may be some reason that they want to be in a specific school, then what we are really saying here, that certainly on the basis of good personnel relationship with [474] employees—Certainly, a contented employee and a happy employee is very, very important. So, consequently, if this can be done on the basis of not being in conflict with the instructional program of the Denver Public Schools, I think it has been done.

In other words, good personnel policy indicates that it is the responsibility of those people in charge of personnel or the administration of schools to have a happy staff to the greatest degree, and if an individual is forced absolutely contrary to some legitimate reason and it's not in conflict, certainly, I think this is consistent with good relationships.

Q. Well, now, this convenience of teacher aspect, that would apply to even a brand-new teacher once he was hired, would it not? A. It doesn't apply in accordance with this agreement from the standpoint of the agreement. The agreement does not cover the new teacher. However, it does not alter good personnel relationships.

Q. Well, now, is my understanding right then that Exhibit E doesn't cover probationary teachers? A. This Exhibit E covers the matters pertaining to teachers of the Denver Public Schools unless otherwise stated from the standpoint of recruitment and so on, and there are no points in here that refer to a teacher before he [475] is employed in the Denver Public Schools.

Q. Well, isn't a probationary teacher an employee of the school district? A. A probationary teacher is, after he has begun his service with the Denver Public Schools.

Q. That's what I'm talking about. A. I thought you were talking about newly-recruited teachers.

Q. I'm talking about those in the course of his three-year probationary period? A. He is represented by this agreement, yes.

Q. Now, this convenience factor, would it be something that would be taken into consideration in considering the request of an Anglo teacher to transfer out of a black school? A. Normally we would not transfer these individuals out of a black school if we refer to the principles of this particular case, depending, of course, upon other matters of competency.

Q. Well, Mr. Johnson, I'm talking now about a situation where that is the fact; where you're considering the transfer application of an Anglo teacher out of a black school.

Mr. Creighton: Your Honor, I want to make note of an objection to this form of questioning. We don't know what counsel means by black school or white school. I think this has got to be with somewhat more precision.

[476] Q. Mr. Johnson, do you know what I mean by black school, sir? A. I think you're referring to a school that has a large number of Negro students. However, I don't know whether you're basing this upon percentages or not. We normally speak of these schools, where we have a large number of culturally-deprived pupils or target area schools, because the points you're referring to do not necessarily refer to schools that are entirely or largely populated by

Negro pupils. It could be Spanish-American pupils or it could be Anglo pupils. And I'm assuming that you're referring pretty largely to schools where we have culturally-deprived pupils.

Q. I'm talking about black schools, Mr. Johnson, because it's the black schools that we're focusing on in this particular hearing.

Now, I believe I have a question pending and the question is, when you are considering a transfer request from an Anglo teacher in a black school who wants to transfer out of that black school, is 14-3-6 one of the criteria that are employed in judging that Anglo teacher's transfer? A. It would be employed there, and also your previous—

[477] Q. The answer to my question is yes? A. The answer is that they be given the same consideration as any other teacher with seniority prevailing.

Q. If you would refer then to Exhibit 26, over on Page 2, Paragraph 8, Exhibit 26 is Policy 1617-A, is it not, Mr. Johnson? A. That is correct.

Q. And 1617-A is supposedly the School Board's policy on teacher transfer, is it not? A. No, the School Board policy on teacher transfer is this agreement which supersedes all policies regarding teacher transfer.

Q. All right, now, look at Page 2, Paragraph 8, Exhibit 26, if you would. That Policy 1617-A provided, did it not, that certificated teachers were to wait three years before applying for a transfer? A. That is correct.

Q. Well, is it still the policy of the district, Mr. Johnson? A. It is not the policy of the district. They may apply in accordance with this agreement. However, again, seniority would normally prevail in this respect.

Q. Three years is the period of probation, is it not, Mr. Johnson? A. Yes.

[478] Q. Now, is there anything in Exhibit E, the teacher's contract, about how long a certificated teacher is to remain in a particular school before he transfers or requests a transfer? A. It indicates in here that seniority shall prevail and the interpretation of that, of course, is that on the basis of the transfer we do feel that a teacher probably should continue serving in the same school for a period of at least two to three years and that was the intent of the previous policy of the Board of Education.

Q. Well, Mr. Johnson, I'm a little confused. Take a teacher who has been at a school for one year, who is certificated. Is the fact that he has only been at that school for one year still one of the factors that you consider in passing upon his application for transfer? A. Yes, I think it would be considered, and I think in the case of that teacher of one year I think the recommendation of our personnel services would be that this teacher should not be transferred at that particular time unless there be some other circumstances for the best interests of the educational program.

Q. But I take it under 1617-A when that was in full bloom, that it would take a rather exceptional circumstance, would it not, for a certificated teacher to be able to transfer out of a school in less than three years? [479] A. Yes, it would, and I think this is also the case under the present—the existing agreement with DCTA.

Q. Do you think the teachers agree with you on that, Mr. Johnson? A. Well, let us again refer to the fact that it is—that we do have some other things in here, and even if this teacher—whether this teacher had one year experience or nine years experience, this agreement is so written that we can bring to the attention of the teacher

the fact that this policy was written for the best interests of the educational program as it related to all teacher transfers, and I am certain that the—that this point could be brought up through the Denver Classroom Teachers Association by the teacher if they objected, but I am likewise certain that in our anxiety to attempt to hold a staff in a particular school then probably they would recognize this.

Q. All right, let's then turn to 14-4 on Page 27 of Exhibit E. These then are the general criteria for transfer requests initiated by the administration, are they not? A. Yes. Yes, sir.

Q. As I understand your testimony on Friday, such administration initiated requests under Exhibit E have impressed in them certain options to the subject teacher, is that correct? A. That is correct.

[480] Q. For example, when you ask a teacher to transfer out of a school into another school, you also have to give him an available—a list of available other options, is that correct? A. That is correct.

Q. And then what happens if he opts for one of those other options, rather than the one you had selected him for? A. I think we would again have to give him a definite reason why we wanted him in a specific situation and he would certainly have the recourse of a grievance if he did not feel that we had been fair.

Q. So, I take it this then is one of the—one of the factors that sort of ties your hands, for example, in transferring out some of these concentrations of Black teachers in the Black schools, is that correct? A. I don't think this would necessarily tie our hands in this respect, because if these teachers had seniority and requested transfers—

Q. Pardon me, we are talking about administration initiated requests, Mr. Johnson. A. Oh, in this particular —in this particular request, if we were to transfer a teacher out of these schools, any of these schools that you are mentioning, then it would be necessary for us to give them a list of the vacancies throughout the city.

[481] Q. And you expect that they would ask—well, what do you expect to happen in such circumstances? A. Well, I think you are asking me a question here—we would have to know the individual. Who is the individual? If you could specify the background of the individual that requested this, what his ideas may be, I could give you the answer probably on a guess as to the type of school that he would want and so on, but to just ask me point blank on any individual I couldn't begin to realize what he may request.

Q. Mr. Johnson, has your administration ever used 14-4 to even attempt to transfer a Black teacher out of a Black school? A. Yes, sir.

Q. How often? A. I'm not in a position to tell you that number for this reason, as I related earlier these are handled by the Director of Personnel Services, but I do know of at least two cases of this type.

Q. When did that take place, Mr. Johnson? A. We had one within the period of the last year, year and a half. We had another one a matter of about four or five years ago before this agreement came into being.

Q. Well, that one four or five years ago isn't even relevant to my question. A. That is correct. It would be relevant to the old [482] policy.

Q. So, you have had one attempt by this administration? A. I stated that I know of one. However, we must remember that the Directors of Personnel Services, ele-

mentary and secondary, handle these transfers, and they do not report to the Deputy Superintendent or to the Superintendent regarding these. These are handled at that level.

Q. Well, a year and a half ago you weren't the Deputy Superintendent, were you, Mr. Johnson? A. That is correct and at that time they were not referred to the Assistant Superintendent unless there was some conflict.

Q. Well, let's turn then, Mr. Johnson, to the hiring of new teachers. As I understand Mr. Cruter's testimony, in 1968 there were approximately 686 new teachers hired by the District. Does that sound about correct to you? A. Yes, it would be approximately that number.

Q. And about 39 of these were Negroes, is that right? A. I don't know the exact number at the moment, but I would imagine on the basis of new teachers hired this would not be too far from being correct.

Q. You don't mean you have some sort of quota, do you, Mr. Johnson? A. No, sir, but I know what experience has brought us over a period of years.

[483] Q. You could tell us from your records, could you not, Mr. Johnson, just how many of these new Negro teachers just happened to end up in Black schools? A. Yes, our personnel services would have such records in the assignment of all new teachers.

Q. As I understand your testimony, each new teacher applicant is given an in-depth interview, is that correct? A. That's correct.

Q. How long does this interview last? A. This interview—I think when we speak of in-depth, I think there are two parts of it. One is a close examination of the application of the teacher, the references, the gathering of references, the transcripts and other pertinent informa-

tion. The interview vary in length of time—I am speaking now of the actual face to face contact—and probably would run 15 minutes to a half an hour.

Q. Would you say that most of your applicants—well, you tell me, out of your applications received, approximately what percentage of applicants get to the point where they have a personal interview? A. Well, as far as the applicants are concerned, any individual who has submitted his complete folder—that's the application blank, transcript of credits, names of references—and our gathering of those references and this data must be on hand first. On this basis, all individuals [484] who have submitted that information are entitled to an interview.

Q. Now, you mentioned on Friday some of the characteristics of the teachers which you are looking for with respect to the teaching of the urban culturally deprived child. Do you recall that testimony, Mr. Johnson? A. Yes, sir.

Q. Now, is this personal interview—is this one of the devices that you used for making this determination? A. It is one of them, along with the others.

Q. Well, what others do you use in this particular regard? A. The general background, previous experience, recommendations of other people and statements by the teacher at the time that—written statements that he may include in his folder or with his folder.

Q. Now, I believe you also stated on Friday, Mr. Johnson, that last year the School District had some 3,000 applications from new teachers. A. Approximately that number.

Q. About how many of those received one of these in-depth interviews? A. I would say that all of those that answered the schedule for interviewing. When we speak of

this 3,000, these are individuals who have been interviewed. They have [485] all their complete files and have been interviewed, because we do not consider an individual an applicant until such time as he submits such file and has been interviewed, so I would say 100—approximately 100 of these.

Q. All right. Three thousand of them. How many of those interviews took place on college campuses, for example? A. I would imagine that on college campuses that there were probably 35 to 40 of the colleges that were visited.

Q. And your recruiting year runs from what month to what month? A. Usually starts about the middle of November and—November, December, usually in the Colorado colleges, and then during the months of January, February and March and April.

Q. So, November through April? A. It's really about the middle of November or first of December. It varies, depending upon the schedules being arranged through the colleges and universities.

Q. Now, how many people are employed in the personnel department who participate in this interviewing process? A. In the personnel department, we have about five—five individuals in Personnel Services per se who participate in this. In addition to this, principals, directors and others are called upon to assist in interviewing, and I would [486] imagine last year as I recall Personnel Services submitted a list of about 20 principals and directors who were included some way or other in recruiting.

Q. Is my understanding correct, Mr. Johnson, that presently the personnel department employs no Negroes? A. That is not entirely correct. As of this last spring, we made a transfer of a Negro to that department in re-

gard to certain activities of Personnel Services. However, he is not listed at the present time under personnel, budget-wise, but the transfer is to be made the new budget year, and in the meantime the Division of Education is carrying this individual, but he is now under the direction of the Director of Personnel Services.

Q. How many Negro recruiters are there? A. The Negro recruiters that are listed for last year, as I recall there were three, four, that were listed.

Q. Is Mr. Cruter one? A. Mr. Cruter is one.

Q. Mr. Ward another? A. Mr. Ward is another.

Q. Who are the other two? A. Mr. Oliver, as I recall, is on the list, and I was under the impression that Mr. Small was called upon. I would not vouch for that, so let us say these three.

Q. All right, now, you mentioned the fact that you [487] recruited in 12 southern teacher colleges, is that correct? A. I did not mention that, but I think that is correct. I said we did recruit in southern colleges and universities. I don't recall the exact number. I may have, but I am not certain—

The Court: I think Mr. Cruter stated that.

Mr. Greiner: I am sorry.

Q. But that is a fact, Mr. Johnson? A. That's approximately the number, yes.

Q. Do you know what the background of teacher graduates from those schools is, Mr. Johnson? Let me be more specific. For example, do they come from an urban or a rural environment? A. I think probably the composition of such colleges and universities would be very similar to other private colleges in the United States, a combination

of both. I would presume that probably in the southern universities, as is true of—or, the southern colleges, as well as is true of the northern, I imagine there are quite a large number of rural students. This seems to be the case in most colleges of this nature.

Q. Now, when we are talking about these southern teachers colleges, Mr. Johnson, am I right in assuming that we're talking about Negro teacher colleges? A. That is correct.

Q. Now, how many of the graduates from those colleges, [488] Mr. Johnson, come from an integrated educational background? A. I don't know. I am speaking, of course, in the case of secondary school experience. I presume this is what you are referring to.

Q. Their prior public school experience. A. That I would not know.

Q. And these teacher colleges are primarily all Black, are they not? A. Yes, that is the ones that you are referring to, although we have many institutions where they are both.

Q. Now, I believe that you stated that in 19—well, as of September, 1968, you had increased the number of Negro teachers to approximately 400 in the school system, is that correct? A. That would be certificated people in the school system. As I recall, the latest figure I have is just short of that, about 394, the figure that I recollect, roughly 400.

Q. The figure that I have is 322. A. Have you included the administrators in this particular group, because we are referring to certificated employees?

Q. Oh, I see, I believe your testimony concerned only teachers? A. Yes, I was speaking of certificated people.

Q. So you have got 322 Black teachers, is that correct? [489] A. I don't know the exact number. I only know the total number of certificated employees.

Q. In September of '67 you had about 311 Black teachers? A. That sounds to be approximately right.

Q. And in 1965 you had 273 and a half Black teachers? A. That would be correct. Let me explain the half. One half, maybe it would be a half teacher in a school but may have one half other assignment.

Q. He works half days, is that right? A. Would work half days or half in another division.

Q. Now, in 1965 do you know approximately what percent of all teachers were Negro in Denver? A. I would imagine approximately 7, 8 percent.

Q. And as of September, 1968, do you know whether that percentage has gone up or gone down? A. I would say it is approximately the same because of the increase in the number of teachers.

Q. Now, there has been an increase in the number of Black teachers, is that right? A. That's correct.

Q. From 273 and a half to 322, and there has also been a similar increase, has there not, overall in the number of teachers hired by the schools? A. That is true.

[490] Q. So, today you don't have percentage-wise more Black teachers than you had back in '65? A. I would imagine it is approximately the same.

Q. Now, again, I believe you have Exhibit 20 in front of you. Would you turn please to Page D-13. Now, this committee was formed in 1962, is that correct, the committee that issued this report? A. Yes, that is correct.

Q. Now, during the course of their studies and deliberations, did that committee or members thereof meet with you, Mr. Johnson? A. Members of the committee met with me. I did not meet with the committee as a whole.

Q. Now, this committee says here that it is convinced

that race has been relevant in the assignment of teachers, is that correct? A. Yes, that is correct.

Q. Now, did that—and this was your department? A. That's correct.

Q. Now, who was actually doing the assignment of new teachers, say, back in 1963 and '64? A. The direct assignments of those new teachers would have been made by the directors of elementary personnel, director of secondary school personnel services, in consultation with other staff members, principals, as well as [491] instructional staff.

Q. When did they leave? A. When did they leave?

Q. Yes, are they still assigning teachers? A. They are still assigning teachers, that is correct.

Q. Now, there has been an improvement, has there not, Mr. Johnson, in the distribution of Black teachers throughout the school district? A. Yes, there is apparent improvement on the basis of Black teachers being assigned to other schools and we are moving in the direction of attempting improvement in certain schools.

[492] Q. From the standpoint of the administrator of this system, and of this redistribution, if you will, what is your objective in that redistribution? What are you doing? A. We see the necessity for teachers of various ethnic groups working very closely together and the fact that a school is the closest unit that we have, we believe that a majority group teacher, being in the midst of that particular faculty, can assist a great deal as the faculty is working on projects relating to minority. And we think it is also well worthwhile for pupils in the school to have an opportunity to associate with the teacher minority group if they happen to be of the Anglo ethnic group.

Q. So there are two purposes, one is to give, say, the Anglo teachers a little more knowledge about the Black teacher and the other is to give the Anglo students a little more knowledge about the Black teacher? A. To the extent we can. We must recognize, however, that unless they are in a special assignment that probably it would be pretty difficult for a teacher to have contact with very many Anglo students because of class size and so on.

The Court: Nevertheless, I assume you feel it's important. That was the question.

The Witness: Yes, we feel that it is important. We're working in that direction.

[493] Q. Well, Mr. Johnson, do you feel, having say one Negro teacher in an Anglo school satisfies that objective? A. No, sir. I do not feel that it satisfies it. And we're working as diligently as we can in the direction of getting more minority group teachers, and we have worked very diligently in this respect. But, unfortunately, we do need qualified applicants and we're trying desperately to get them.

Q. Now, Exhibit 20 was issued on March 1, 1964? A. Yes.

Q. That was some five years ago? A. Yes.

Q. And there is still 27 elementary schools with no black teachers, is that correct? A. Yes, that's approximately correct. You're speaking now of black teachers and not minority teachers?

Q. That's right. A. Yes.

Q. If you use all minority rather than just black, then it goes down to what? About 22 with all minority teachers? A. It would be less than that. I think the most recent counts we have would be roughly about 15.

Q. Would you please turn then to Page D15 in Exhibit 20 and I have particular reference to Paragraph 7 on that page.

Have you found that?

[494] A. Yes, sir.

Q. That's one of the recommendations of the committee, is it not? A. Yes, sir.

Q. And it says that in policy statements adopted by the board and the administration it should be made clear that teacher preference as to assignment is subordinate to other criteria? It says that? A. That is correct.

Q. And it also says that each qualified teacher in the system is expected to be able to teach and to be prepared to teach in any school where the administration thinks he can be most effective, is that correct? A. That's the statement.

Q. Now, is there somewhere in the written policies of the district where this recommendation has been adopted? A. Not exactly as stated here, no. This is not correct. However, when we say expected to be able to teach and to to be prepared to teach in any other school, I would say the criteria used in recruiting would bear this out; that an individual— For instance, when teachers are hired by the Denver Public Schools they are hired to teach in *the* Denver Public Schools and not for a specific school. And, consequently, in the interviewing, in the background of those individuals, we assume that the individual is able to teach [495] and prepared to teach in any school.

Q. So I take it you have—you feel you have adopted this policy, this recommendation? A. I would say that to the extent that this is one of the criteria for the selection of teachers from the standpoint of his willingness to do this, this is correct.

Q. And I then can assume that, for example, when you're having one of these interviews with a prospective Negro teacher, that you discuss with him whether or not he would be willing to teach in an Anglo school? A. That is correct.

Q. And the same would hold true with respect to a prospective Anglo teacher as to his willingness to teach in a black school? A. Yes. However, let me amplify it in this respect. This is the thought of the question. However, it's easy to answer yes or no. I think that a good interviewer must look deeper into this rather than ask the question pointblank because you will get the answer definitely in the direction you want.

Q. You will get the right answer? A. You'll get the right answer, that's right. So, consequently, let me say this is one of the purposes of the interviews, to find this out. But it is not asked the direct question, whether he would be willing to teach in an [496] Anglo school or whether they would be willing to teach in the other. I think it's important that this information be gained because, frankly, we do not want teachers in the Denver Public Schools, whether it's an Anglo teacher teaching in an Anglo school or whether it be a black teacher in a black school, who does not have the sincere objective in the direction of good relationship—good racial relationship. I think this is detrimental—just as detrimental to have an Anglo teacher in an Anglo school who has a dislike for other ethnic groups. I think he could do as much harm there as he would do even if he were assigned in a minority school.

Q. I don't think that anyone would disagree with you, Mr. Johnson. But I thought you told me you actually asked these questions in the course of your interviews and I take it you do not? A. That's the reason I amplified this.

I said this is information that we want. I purposely amplified it to say that you wouldn't get the answer you want by just asking the question directly.

Q. How do you go about obliquely getting this information if you don't get it directly? A. Pretty largely on the basis of asking about the background experience that they have had; finding out their relationships with various organizations within the community, their college activities, whether or not these are groups [497] in which we consider the human relations is of the highest order and so on. There are many leading questions that would vary with the particular applicant and the leads he gave you.

Q. Yhat kind of background would, for example, lead your interviewer to conclude that the Anglo—that an Anglo would be willing to teach in a black school, for example? A. Well, we have many requests of many Anglos for teaching in black schools.

Q. But not quite enough? A. Not quite enough. But we have these. I think probably, on the basis of the background as recorded from a college or university regarding the sociology courses they may have, the type of student activities they participated in, whether they are graduates of a school that may have a reputation as being a well-oriented school from the standpoint of racial relations, and particularly an integrated college or university, and these are some of the things. Although we can find the quality teacher we want probably in strictly the Negro school or strictly the Anglo school, but we must do it with care.

Q. Sociology is generally a required course, isn't it, Mr. Johnson? A. We are thankful that recently this is getting to be [498] required. However, this was not neces-

sarily a requirement of education graduates a few years back. We find that the colleges and universities are moving in this direction and it's one of the reasons I think that the academic background of our newer teachers in the school system or any school system is of a better nature.

Q. I believe you indicated earlier that these black schools, Smith, Stedman, Barrett, Hallett—

Mr. Creighton: I object to that characterization, Your Honor.

The Court: Well—

Mr. Creighton: He can call them by name.

The Court: I don't think it's practical. I think he ought to have some way to refer to these schools in a group. Do you have any suggestions?

Mr. Creighton: Yes, majority black; majority white.

The Court: Well, if that would make you feel better. Be assured that we are not going to be influenced by any characterizations here. We're seeking out the true facts.

Mr. Creighton: I am mindful we are making a record, too, Your Honor.

The Court: Beg pardon?

Mr. Creighton: I'm mindful that we're making a record, too.

[499] The Court: Well, I will leave it to you, Mr. Greiner, to work this out.

Mr. Greiner: I'll do my best, Your Honor.

Q. Mr. Johnson, these majority black schools, they have a greater turnover of teachers, I believe you indicated, is that right? A. Yes. I would say that the schools that you

mentioned probably have a greater turnover of teachers, but not necessarily so. I can think of two of those schools that probably does not have a greater turnover.

Q. Which ones? A. I think that you included Hallett there, for instance, and I think Hallett—I think Hallett probably has less turnover than the average in the city, although I would want to check my records on that particular point.

The Court: You told us earlier that there were more vacancies on the faculty in those schools than in other schools.

The Witness: Your Honor—

The Court: That you have a problem of filling vacancies all the time in these schools.

The Witness: Yes, Your Honor, but I brought out the point that vacancies exist in the summer, filling them with these new teachers. We have vacancies throughout the city, but they are filled during the months of May and June— [500] or April and May by our experienced teachers who have requested transfers. That's the reason we have a greater number of vacancies in this particular area. That is correct.

By Mr. Greiner:

Q. Now, the 1964 report focused on a concentration of black teachers in the black schools, is that correct, Mr. Johnson? Or, pardon me. In the majority black schools? A. Well, in some instances, it so happens there are schools that show a majority of black teachers but I believe, if my recollection is correct, I think Phillips is a school—and I

don't believe this is one we have attempted to get a Negro or Spanish-American teacher in—I believe that's a good example.

Q. Phillips is an integrated school, is it not? A. Well, I think on the basis of percentagewise, it depends on what you call an integrated school.

Q. It's predominantly Anglo? A. Well, then, we might move to Hallett. Hallett, I think, has—I think that out of that faculty they have, I think, three teachers. So I would say that it doesn't hold true. Although I would concur with you generally, I would concur with you generally that we do have a concentration in a number of those schools. That's correct.

Q. I think you would be working to reducing the concentrations of black teachers in these majority black or [501] predominantly black schools. A. I would say that we are attempting to do this. That is correct.

Q. Now, you mentioned Hallett. I see that in 1965 Hallett had one black teacher and that in 1968 it had three. A. That is correct. And I think probably on the basis of proportion, and I'm not certain of the proportion that we should have for the best interests of the school—but we do know that this has helped the faculty.

Q. Barrett in 1965 had eight black teachers and today it has 10, is that correct? A. And the proportion would be about the same. I think they are roughly—I think about fifty percent.

Q. Well, according to my figures in 1965 Barrett had 20 teachers and today it has 19, Mr. Johnson. A. That is right.

Q. And Smiley is another example, isn't it? Ten black teachers in 1965, 23 today, is that right? A. That is correct.

Q. Cole is another one. Twenty-seven in 1965 and 31 today. A. I would say all the figures that you are stating I think generally are correct. I do not have the figures before me and I am assuming that you have those from a reliable source.

[502] Q. Then I take it your efforts to reduce the concentration of Negro teachers in predominantly black schools hasn't been very effective, has it, Mr. Johnson? A. Not as effective as we would like to have it. But we have been effective in incorporating a greater number of black teachers in the Anglo schools.

Q. We touched briefly on—It was discussed briefly in your testimony on Friday concerning building capacity. Do you recall that testimony? A. I think the question was asked of me regarding the formula of the 30 pupils per classroom.

Q. And that is what's known as rated capacity, is that right? A. Yes, sir, it could be called a rated capacity or normal capacity.

Q. And it is the rated capacities which are published by the school district, is that right? A. They are published in this respect; that this is the figure that is used by Planning and Engineering for the reports that go to the Board of Education.

Q. Well, it goes to the public, too, doesn't it? A. The public—it has access to these records. But it is of a consistent manner in setting the normal capacity of a school.

Q. Well, now, then, I take it that there is also another [503] kind of capacity and this is arrived at by more subjective criteria, is that correct? A. This is not necessarily numerical or published capacity. There are many things taken into consideration at the time that a building—when this building is used. For instance, we do know that there

are some older buildings that probably have 30 or maybe to a greater capacity. We know there are many situations where 30 is probably a lower figure than we have. But in addition to this particular thing the physical structure, the special programs in the building, the types of things that our division of education wishes to utilize the building for, would be all taken into consideration.

Q. But now I take it that wasn't the gist of your testimony on Friday, that a school, for example, such as, oh, Barrett School or Smith School, with 12 mobile units or Stedman School with 4 mobile units—I take it you agree those schools are currently overcrowded, is that right? Over capacity? A. No, I don't think that I would concur entirely with this, for this reason: that we have made attempts to relieve those schools through various means such as transportation out of those communities. You have already indicated the mobile units. And I think we are maintaining educational programs in many of those schools probably that would have [504] fewer pupils per classroom than the others; double sessions are sometimes used, and the extended school day.

Q. Would you agree, Mr. Johnson, that when you are dealing with these predominantly minority schools that rated capacity generally overstates their actual capacity? A. I think that could be a generalization, yes.

Q. And a good example of that is Smiley, isn't it? Smiley has a rated capacity of 1,635 students. Last year it had 1,553 students. Is that correct? A. That is correct.

[505] Q. Yet, it was on double sessions? A. It was on double sessions upon the request for certain special programs, additional personnel and so on, so this is correct. Smiley is one good example.

Q. I believe you mentioned limited open enrollment.

This was a program that began in September of 1964? A. That is correct.

Q. And this was begun, was it not, at about the same time that the optional attendance zones were expanded? A. Yes, at the same time, as I recall.

Q. Now, it is true, isn't it, that limited open enrollment had no racial balancing conditions attached to it? A. That is correct.

Q. And under limited open enrollment the student had to supply his own transportation? A. That is correct.

Q. And this was the policy then of the district until what? November of 1968, is that correct? A. Yes.

Q. So that was the policy for some four years? A. That is correct.

Q. Would you agree, Mr. Johnson, that limited open enrollment with no transportation provided by the school district made it somewhat easier for Angles to participate in the program than it did Blacks? [506] A. No, I would not agree on that. Largely for this reason, that there is no stipulation regarding the ethnic factor. There is no transportation, but for reasons stated there was an opportunity for the Black students to request the open enrollment to schools not too far away and many of them did. It also enabled those white students who wished to go to the schools in the northeast Denver area an opportunity for them to take advantage of it, so I don't think that it would indicate one way or the other from the standpoint of their ability to take advantage of this. In fact, this was the purpose of the limited open enrollment in 1962, because we had many requests for parents to transfer their children to certain schools.

Q. Well, now, you would agree, would you not, Mr. Johnson, that limited open enrollment really didn't serve

to integrate any particular schools, did it? A. Yes, I think it served to integrate. I don't have the exact figures before me, but I do know that it did serve to integrate certain schools. I think probably a good example of this, because I had referred it to George Washington extention of boundary line, George Washington at the same time that the boundary line was changed, there was an integration, and I believe at the present time there is somewhere between 85 and 100 Negro students in George Washington as compared with roughly ten pupils at the time [507] prior to this open enrollment. I use this only as one example and—but, there are others, so I think that the point is that it serves the purpose both ways, but I think it would be a mistake to say that it had no effect.

Q. Mr. Johnson, limited open enrollment could be used, could it not, by an Anglo student in a transitional school, one that was going from Anglo to majority Blacks, could be used by that student to get out of that school and go to a predominantly Anglo school, could it not? A. Yes, the limited open enrollment would provide this. There is no stipulation regarding the ethnic factor.

Q. And, in fact, some Anglos used the limited open enrollment for just that purpose, did they not? A. There was evidence that many of them used it to go from a predominantly Anglo school to another predominantly Anglo school. Likewise, we found there was a great deal of transfer in the northeast Denver area on schools that had similar proportions of Blacks by Black students, merely requesting transfer from school to school there, so it was working both ways. There seemed to be no exact pattern in this respect.

Q. Do you have any question in mind, Mr. Johnson? A. Do I have your question in mind? As it refers to the

opportunity for an Anglo to move to another Anglo and a Black to another Black?

[508] Q. That's the one. Now, what's the answer to that question? A. Anglo to Anglo?

Q. An Anglo in a predominantly Black school transferring to a predominantly Anglo school. A. It would be possible under that arrangement.

Q. I asked you if it was not in fact done, Mr. Johnson. A. I don't know that—not to any great degree that I can recall, because I think that in an limited open enrollment we found that more people usually stayed pretty well within the confines. The numbers involved citywide would indicate that there was no great number, and as I recall a proportionate number of Negro pupils who requested it was almost as many as Anglos, although they constituted only about 15 percent of the population of the city, so I—

Q. Well, Mr. Johnson, I am handing you what has been marked as Plaintiffs' Exhibit 99, and on Page 4 that exhibit reflects, does it not, the number of transfers received by Montclair School. A. That is correct.

Q. Yes, sir. How many came from Stedman, Mr. Johnson? A. Five from Stedman.

Q. How many came from Montclair Annex?

Mr. Creighton: I object, Your Honor, until this exhibit is offered and admitted.

[509] The Court: Hasn't it been received yet?

Mr. Greiner: It hasn't been received?

Mr. Creighton: No.

The Court: What number is it?

Mr. Greiner: Number 99, Your Honor.

The Court: I have no record of it having been received.

Q. Can you identify Exhibit 99 for us from the front page? Exhibit 99 was prepared by the Division of Personnel Services, is that correct, Mr. Johnson? A. Yes, this evidently—September 16, 1966—

Q. So this was prepared by your Department, is that correct? A. Evidently was.

The Court: Do you consider it authentic?

Mr. Creighton: This is one we—

The Court: He says his department prepared it.

Mr. Creighton: Yes, if I may, let me look at it. It is authentic, I am sure.

Mr. Greiner: Your Honor, we offer 99.

Mr. Creighton: No objection.

The Court: It will be received.

(Whereupon Plaintiffs' Exhibit No. 99 was received in evidence.)

Q. Now, where were we? We were with five transfers [510] from Stedman and one from Montclair Annex, is that correct? A. That is correct.

Q. Now, handing you what has been marked for identification as Plaintiffs' Exhibit 100, I ask you if you can identify that? A. Yes, I imagine this would be released at the same time.

Q. Exhibit 100 was also prepared by your department? A. Yes, I would think so.

Mr. Greiner: Your Honor, we would offer Exhibit 100.

Mr. Creighton: No objection.

The Court: It will be received.

(Whereupon Plaintiffs' Exhibit 100 was received in evidence.)

Q. Now, I believe that Exhibit 100 shows the racial and ethnic characteristics of students participating in the limited open enrollment program, does it not, Mr. Johnson? A. Yes, sir.

Q. Now, if you will refer to the Montclair I believe it is, how many of those six students transferring into to Montclair were Anglos, Mr. Johnson? A. To Montclair would be four.

Q. Four out of six, right? [511] A. Four out of six.

Q. Now, did you have anything to do with the voluntary enrollment program that began in the second semester of this past school year? A. In consultation with other members of the staff, yes, sir.

Q. That was passed by the Board in November of 1968? A. That is correct.

Q. Now, when the Board passed that, was it your understanding that the administration was to encourage participation in voluntary open enrollment? A. It was to encourage in the voluntary, that is correct.

Q. Was the administration to offer any assistance in the establishment of voluntary open enrollment program? A. That is correct.

Q. Well, what did the administration do, Mr. Johnson, in those regards? A. The administration members of the staff moved forward in trying to implement that at a very late time in the school year, at a school semester, trying to achieve this for the date I believe of the second

semester of January 25th, with the Christmas intermission included at that particular time.

Q. Were letters sent out to parents telling them [512] about voluntary open enrollment? A. As I recall, those were prepared by the school-community relations, and they were contacted, yes, and the Division of Education also had contacted principals regarding letters.

Q. Is Plaintiffs' Exhibit 36 the form letter that was used by the administration? A. This came out of the Division of Education, but I have seen this particular letter, yes.

Mr. Greiner: Is 36 in evidence?

The Court: No.

Mr. Greiner: Your Honor, we would offer Exhibit.

Mr. Creighton: No objection.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit No. 36 was received in evidence.)

Q. Now, other than the mailing of Exhibit 36, Mr. Johnson, what did the administration do? A. Well, the report that I had on this, contacts were made with—to the administrative directors of elementary education and secondary education with the principals that they move forward as fully as they could toward the implementation of this particular plan.

Q. Did your department, Mr. Johnson, receive any [513] requests for assistance from parents trying to establish VOE programs? A. They weren't directly by my department but I know one situation where I discussed the matter with a group of parents.

Q. What school was involved? A. As I recall, I am not certain of the exact school. These parents indicated they represented a number of schools in southeast Denver and Hallett School.

Q. These were Anglo parents? A. Yes, sir.

Q. And they wanted to get together some Anglo students and voluntarily open enroll them in Hallett School, is that correct? A. That's correct.

Q. And what did they ask you to do, Mr. Johnson? A. They asked us to move forward on the basis of assisting them to get as I recall about 300 or 400 parents and they wanted to send a letter out right after the principal had sent out a letter indicating that they were interested in gaining these parents, but they had a couple of stipulations in the letter and one on the basis that there would be these transfers if Hallett could be predominantly an Anglo school. That is, it would be more than 50 percent.

Q. Well, now, Mr. Johnson, this letter that this [514] group of Anglo parents wanted the administration to send out, that was going to Black parents, was it not? A. No, I think there was a letter that went out to Black parents. I don't recall that the letter they had—although I think that they were working with a group from Hallett School in addition, but the letter they discussed with me was one to go to white parents encouraging them to sign up to go to Hallett School.

Q. Now, did you get a similar request from a group of Hallett parents for administrative assistance? A. I think that there was a—you are now asking questions that were directly related to the Division of Education and the Division of School-Community Relations. I was not involved in that except as I would be as Deputy Superintendent and knowing about it. Now, I can tell you gen-

erally in this respect, but I did not work directly with them. The only direct involvement I had was that at the time that the parents in southeast Denver came into the administration building to see the Executive Director for Elementary Education. He asked me if they could meet with me and I met with them and discussed that letter. Now, I know that there are many other letters. I know there was a great deal of involvement, but this did not come directly through me.

Q. You personally received no communications from [515] Black parents at Hallett? A. I'm not aware of direct communications you mean. I am aware, however, that the Black—that the parents in Hallett were working through the Executive Director of Elementary Education and School-Community Relations to establish this program. Now, I do not recall a direct request to me on this, but I was aware of this situation and, frankly, this was a part of our attempt to gain integration between the schools of southeast Denver and Hallett.

Q. Now, what the Hallett parents wanted, was it not, was to find one Anglo school where under VOE all of those Black children transfer to? A. I don't know the particular details. I understand that the Hallett parents who were interested in this wanted to transfer in order to relieve and make room for the Anglo parents.

Q. Well, it was just the other side of the coin of the University Park program was it not? A. That's correct.

Q. Now, what help did they receive, Mr. Johnson? A. They received the help of the principal. They received the help of the Department of Elementary Education and also the school-community relations to the extent it was possible at that late date and would not confuse the entire issue. The concern that our administrators had at that

[516] particular moment was not with the plan. They were heartily in favor of the plan but it was the confusion that was existing, particularly when one of the stipulations was that there be sufficient number of white parents who accept this and a sufficient number to exchange and this happening really during the early part of December, in fact, I am not—the Board of Education at its regular meeting on November 21—I see no date on this communication from elementary education, but we know that this was an attempt to get this entire thing done within a—prior to January 27 opening of school, so, consequently, there was a time element here that was almost impossible to meet, particularly with the stipulation that there had to be this balance and the number involved was almost impossible and our staff members had some indication and I think it was stipulated that there should be about 300 Anglo parents and 300 Negro parents, and as far as an exchange was concerned, to the extent that it be possible, I think our staff cooperated, but they couldn't cooperate on the basis of saying, "We will go right up until a week or so before the second semester and if we don't get them, then the whole thing is off." You can't operate and program children in a school on that basis, so I think it was a matter of how far this should go. There was no question regarding the importance of this. The question was is it administratively feasible at that late date to do it?

[517] Q. When did you get this request from the Anglo parents? A. As I stated to you, I did not have the request. The request was—

The Court: When did it come in?

I think we will take a recess.

(The Court recessed at 3:11 o'clock p. m.)

[518] (Following a recess, the hearing resumed at 3:31 p.m.)

The Court: I think, if you could just listen to the thrust of his question and try to respond directly. I mean, to the essence of the question, it would be easier for you and easier for us, too, you know.

The Witness: Yes, Your Honor.

The Court: Just listen to what he is seeking to obtain. You have to concentrate on that rather than pick the outer fringes of the question and respond to that, you know. Go right to the center of it, if you can.

The Witness: Yes, Your Honor.

The Court: Good.

Q. (By Mr. Greiner) You will recall, Mr. Johnson, that we were discussing a request by white parents to make Hallett a sort of a target school for voluntary open enrollment, were we not? A. Yes.

Q. And you have in front of you Exhibit 36. And do you recall when Exhibit 36 was mailed to the parents? A. No, sir.

Q. It was mailed, I assume, prior to the Christmas vacation, was it not? A. I'm not certain. It did not come under my direction.

Q. Now, as I recall, you said you had a meeting with [519] some of these University Park parents, is that correct? A. Yes, sir.

Q. And approximately when did that meeting take place? Was it in early January? A. I don't recall the date on that. I'm inclined to believe that it was earlier than that;

that it was probably prior to the Christmas or the winter intermission.

Q. Now, I take it that these white parents were asking the administration to help them in publicizing the fact that Hallett was to be a target school, isn't that correct? A. That is correct.

Q. Now, was there any discussion during that conversation regarding what you believe to be your responsibility as to whether or not you were to encourage voluntary open enrollment? A. Yes, there was, and we indicated that we had this responsibility.

Q. Do you recall that Mr. Barnes was present at that meeting? A. I'm sorry. I don't recall who was at the meeting, but there were two gentlemen and it's entirely possible it may have been Mr. Barnes. As I recall, the group consisted of three or four ladies and two gentlemen, as I recall. And I don't think I could give you the names right at the moment although I'm inclined to believe—now that I see Mr. Barnes—[520] that he was at the meeting.

The Witness: Were you?
Mr. Barnes: (Nods affirmatively.)

A. I think I recognize Mr. Barnes as being one of the gentlemen and there were two of the ladies that I knew, but I can't place them by name right at the moment, but I have had discussions with them on previous occasions.

Q. You didn't state at that meeting that your only responsibility was simply to announce the program and that you had no authorization to encourage it? A. I did not make such statement; that we did not have responsibility. Because this was definitely a matter that we should push forward, but I did question the particular communication

they wished to send in conflict with other communications that were going out and the matter of timing.

Q. Now, the general policy of voluntary open enrollment, Mr. Johnson, was to achieve some sort of racial balance, was it not? A. Let us say this, that the purpose was to achieve integration in the Denver Public Schools at that particular time. That was our intent; to move as far as we could toward integration and, if racial balance could be achieved, that was it. But it was our understanding we were working for integration.

Q. Well, maybe I don't understand. What do you mean [521] by integration as you use that term? In Hallett, for example? A. Well, Hallett—

Q. How would you integrate Hallett? A. As far as integration is concerned, this must be—there must be, of course, some integration of whilte pupils into Hallett and likewise some of the Negro pupils out of Hallett. Now, I think that, in addition, as we speak of integration, I think there are many factors and that is a complete understanding as we—of the various ethnic groups and so on. A great deal of integration can be done in other ways other than actual contact. And I think that the integration of Hallett would be the result of having probably that proportion of various ethnic groups, that particular type of curriculum; that type of program that would bring about the thing we're all striving for.

Q. Hallett was 95 percent black at the time, is that right? A. I believe that figure is—It is high. I don't remember the exact percentage.

Q. In fact, as I recall, there was one Anglo child in Hallett at the time, is that right? A. I can't testify to that, but I know there were very few.

Q. Well, again, returning to my original question, Mr.

Johnson, how many Anglos would you have had to put into [522] Hallett in order, as you use the term, to integrate Hallett? A. I think this is pretty largely the matter of the advisory committee of Hallett parents working with the principal staff generally to determine what they would consider to be a good composite figure to get this particular job done from the standpoint of teaching through integration.

Q. How many letters did this committee want you to send out, Mr. Johnson? A. As I recall, it was a single communication that I remembered; just one communication, and that being from the parents in the southeast, to the southeast parents.

Q. To how many parents was that letter to be sent? A. I think they were under the opinion that—they were hoping that the principal would send them out and I took it that they wanted them to all parents in that particular area. But it would be a number of those schools in that area; four or five schools involved.

Q. Well, did the principal send them to you to get authority for that mailing? A. No, sir.

Q. Did the principal make the mailing? A. I'm not aware of it.

Q. In Exhibit 36, in fact, is it not—its' the only one—the only written communication sent out to the parents on a voluntary open enrollment at that time? [523] A. I cannot testify to that because, again, this is sent by the Executive Director and remember, we are now in the field of Division of Education and it was handled in that particular area and not through the Deputy Superintendent's office. I was aware of it in my position as Deputy Superintendent in generalities.

Q. Well, let's talk about mobile units, shall we, Mr. Johnson? A. Fine.

Q. As I understand it, you said that when the mobile units were placed in Northeast Denver they were placed there with the concurrence of the parents, is that right? A. Let us say they were placed there on the basis of having consulted with the parents.

[524] Q. Well, were the parents in favor of the placement of those mobile units? A. I think that the provision under which the mobile units were placed there were a number of possibilities and these possibilities would be such as this: would you prefer double sessions? Would you prefer extended school day? Would you prefer our attempting to go on this basis? Transportation out or mobile units? So, it was more or less of an alternate plan rather than specifically asking them about mobile units as such.

Q. How did you describe this alternate of busing out, Mr. Johnson? That was one of the alternatives discussed? A. It was, and in these particular meetings that—at that time I attended as the Assistant Superintendent in charge of instruction to that meeting, who had discussed this with the parents. There was two of us in attendance and only at one school was I in attendance and that was at Smith Elementary School.

Q. Smith, is that the one with 12 mobile units? A. That is the one with 12 mobile units.

Q. When did that meeting take place? A. I cannot give you the exact date. However, it was—let's see, I was there approximately three years ago. I would say during 1966.

[525] Q. You have Plaintiffs' Exhibit 101 in front of you? A. Yes, sir.

Q. When does it show on Page 2 the first mobile unit going into Smith? A. 1965.

Q. Now, does this mean that you are talking about—was that before there were any mobile units in Smith?

A. As I recall, the meeting that we are talking about I think was after the first group of mobile units in the school.

Q. After you had put in six in '65? A. Yes.

Q. Then you put in six more in '67? A. Yes.

Q. Pardon me, '66. A. '66. I am inclined to believe that the meeting that I am talking about—I'm inclined to believe that they had mobile units at Smith at that particular time and it has been the result of the principal having worked with the parents and others in the community. It was before we put in the large number.

Q. Now, did you tell me that the parents preferred mobile units over double sessions, is that right? A. In attending the meeting I attended I would say, number one, the parents did not appear as though they [526] wished to be transported out of the area. They preferred the neighborhood schools.

Q. Mr. Johnson, you heard my question. Do you have it in mind? A. I do not.

Q. The parents expressed a preference for mobile units over double sessions? A. As I recall, they did.

Q. And the parents expressed a preference for mobile units over extending class days, did they not? A. As I recall, they did.

Q. All right, now, we will get down to the transportation, Mr. Johnson. Now, what did you tell them about transportation? A. Well, this was presented by the principal prior to our particular meeting and the meeting was to have the parents there to discuss this matter of transporting out. The statement that was made was that if they were interested in transportation we would designate certain schools in the city where they would be trans-

ported and those schools—we had a general list, but no specific schools in mind at that particular time. What we were interested in finding out was whether or not they wished to be transported.

Q. Well, now, how many schools were on that list, Mr. Johnson? [527] A. There were approximately 12 schools in—primarily in south and southeast Denver.

Q. And what we were talking about then was the prospect of transporting approximately 180 students? A. Depending on if they wanted to eliminate the—it would have been more than 180, because in addition to mobile units they were overcrowded. I don't think an exact number was—but, later, as we moved into it, we had asked for somewhere in the neighborhood of 250 students.

Q. Well, now, as I understand it, Mr. Johnson, this meeting took place at a time when Smith already had six mobile units? A. As I recall.

Q. And when the administration was considering putting in six more, isn't that right? A. That is right.

Q. So, your conversation was, "You want six more mobile units or do you want transportation out?" That was the subject, was it? A. This was generally the subject. That is, which would you prefer, because they were overcrowded.

Q. So we are talking about at least 180 and perhaps more? A. That is correct.

Q. Now, of the 180 children minimum that were to be [528] transported, did you offer to transport them to only one or two or three schools? A. No, they were—the schools available were listed. We had a certain number. We did not have that much space in one or two schools. It had to involve at least eight or ten schools.

Q. So you had to split them up? A. We had to split them up because of lack of space in any single school.

Q. You had no schools down in here that were being underutilized? A. Not to that extent that we could take that many pupils.

Q. Some schools became underutilized in 1967, did they not? A. Underutilized to this extent, that they could take possibly 20 to 30 to 40 pupils, but not to the extent that we had, that number, until such time as the building program was completed in south and west Denver, and then there was two schools, namely University Park and Asbury Schools, where these pupils had been attending, and when the Frank Traylor Elementary School was opened this did give us space in those schools but probably more space in Corey than any one other school.

Q. Now, back in '66 when you attended this meeting, [529] Mr. Johnson, were those Negro parents told that the receiving schools under the transportation which was being offered, did they ask were there going to be any reception programs in those receiving schools? A. Yes, they were told this because our department of school-community relations had been working on similar programs.

Q. And they were told that there would be some sensitivity training at those receiving schools? A. That is correct.

Q. Were they told, Mr. Johnson, how bad the achievement was at Smith? A. I don't recall any statement being made to that effect.

Q. That wasn't released publicly until October of '68, isn't that correct? A. The test scores were released in 1968.

Q. Now, even in 1964, and I call your attention to Exhibit 20, which I believe you cited for the proposition of the committee approved use of mobile units, there were some conditions, weren't there, attached to the committee's approval of mobile units? A. The only conditions that I can recall that were attached were the conditions that these were not to become permanent, a permanent part of the educaiton plans. They [530] were to facilitate it at the time of emergencies.

Q. Yet, according to Exhibit 101, some of the mobile units placed in northeast Denver in 1964 are still there, aren't they? A. Well, of course, it is then a matter of what constitutes permanency on this and they are still continued there because there is a need for two things. One is the fact that we have an excessive number of pupils in certain schools there. The other one is that particularly at Smith School they were left there because—even though we had relieved the membership as related to the capacity—that thre are not special programs going on in those mobile units, and that is the reason, and I think probably the mobile unit is very worthwhile for a special type of program.

Q. Well, Mr. Johnson, didn't you tell me just a moment ago that Smith is still overcrowded? A. Not if we were to take normal capacity and include the mobile units.

Q. Was there any provision under the resolutions which have now been rescinded for increasing the transportation out of Smith? A. Only to the extent that we do promote to a great degree the voluntary open enrollment plan and make some other provisions.

Q. Excuse me, Mr. Johnson, I am talking about 1531. [531] Do you know what 1531 is? A. Yes, that's a previous resolution that was rescinded, is that—

Q. That's correct. A. Yes.

Q. Didn't 1531 contemplate the elimination of some of the mobile units at Smith? A. 1531 from the standpoint of reduction in membership, yes, that is correct.

Q. So, if you reduced the membership further you could get along without those mobile units? A. Depending upon the special programs.

Q. Oh, you couldn't have the special programs? A. The programs at Smith School are of such a nature at the present time that they probably need normal capacity of over the 30 to one room, so it would necessitate a movement of a greater number of pupils in this respect.

Q. Now, there are 12 mobile units there today? A. There are—yes, that is correct, there are 12.

Q. Well, even 1533 talks about removing part of those. A. That is correct.

Q. And there isn't going to be any increase in the special programs, is there, Mr. Johnson? A. We hope that we can accomplish both and that would be to relieve the membership and continue the special programs.

[532] Q. Now, this conditional acceptance of mobile units in the committee report—at the time that report issued, there were only eight mobile units in all the City and County of Denver, is that right, Mr. Johnson, referring to Exhibit 101? A. Well, the mobile units, according to this report—there were—

Q. Eight? A. A total of eight in this area, yes.

Q. And none of them were in northeast Denver, were they, Mr. Johnson? Read off the schools. A. Dowell, Wyatt—

Q. Now, Dowell is down here? Wyatt is up here? A. Wyman.

Q. That's over in here somewhere. A. That's right, and, excuse me, Wyatt had three and Greenlee three.

Q. Where is Greenlee? A. In West Denver.

Q. So, there were none in northeast Denver? A. That is right.

Q. And then shortly after this report was issued northeast Denver got quite a batch of mobile units didn't they? A. That is right.

[533] Q. How many? A. Well, Philips received four, Smith the original six, Park Hill three, Hallett two, and then Smith's additional six, from the period of September, 1964 and on.

Q. So, by the time we got to September, 1968, the total mobile units in Denver had gone from eight to 28 or 29? A. Twenty-nine.

Q. How many of those 28 or 29 were then in northeast Denver? A. Out of the northeast Denver group, there would have been 21 of these as I count them.

Q. Maybe you'd better count again, Mr. Johnson. A. I have 21.

Q. All right, so 21 out of 28 were in northeast Denver? A. That is the figure I have.

Q. As of September of '68? A. Yes.

Q. Now, I believe you mentioned that there were some units at Hallett? A. Yes, sir.

Q. How many? A. Hallett had two of these, two of these units.

Q. They got two in November of '65? A. November of '65.

Q. I believe you mentioned on Friday that the units [534] were removed at Hallett because Hallett student membership had declined? A. Well, then, there was some additions there, that is correct.

[535] Q. There were eight new classrooms built at Hallett, were there not, Mr. Johnson? A. That is right.

Q. And that is when the mobile units got moved? A. As I recall, that is correct.

Q. Now, would you say that today the attitude of the residents up in Northeast Denver are a little less favorable to the use of mobile units?

Mr. Creighton: Objection. No indication he knows what the attitude might be.

The Court: He may. We will find out.

A. No, sir, my answer would be I don't know the attitudes, specifically.

Q. You knew them back in 1965 and 1966? A. At that time there was contact with the parents and they had indicated the desire to use them.

Q. You knew them back in 1965 and 1966? A. At that time there was contact with the parents and they had indicated the desire to use them.

Q. And you have no indication that they are less desirble now than they were then? A. I have no indication.

Q. Now, even as early as 1967, weren't there requests for busing out of certain of these Northeast Denver schools to relieve overcrowding? A. I think the Stedman School—we had some requests at Stedman School.

Q. That's the only one? [536] A. That was the only one that indicated a specific request for busing at that time.

Q. How about Phillips? A. Phillips School was a school that became overcrowded in—I don't recall the year—two years ago, and we had taken some pupils out of Hallett to relieve Hallett and then we did consult with the principal

and the parents and those pupils in that area were transported to Southeast Denver.

Q. How about Smith? A. And the same thing happened at Smith. There was quite a concerted effort on the part of our school community relations department working with parents and many of the parents in that particular area did work and we transported out of Smith.

Q. Now, actually, ever since February 2, 1966, the district has had a policy, namely, 1223, has it not, concerning the busing of students out to relieve overcrowding? A. Yes, that's been a policy and the practice—we also had the practice prior to that time.

Q. Now, at Stedman today, as I understand it, there are about 286 students being bused out? A. That's approximately the number.

Q. But there is still four mobile units at Stedman? A. That is correct.

Q. And at Smith there are 214 students being bused out, [537] is that correct? A. That is correct.

Q. But there are still 12 mobile units at Smith? A. That's correct.

Q. And at Phillips, you have some busing out? A. Yes.

Q. Thirty, as I understand it, students to Ashley, and 50 to Palmer? A. I believe that's the number, although I don't remember the exact schools.

Q. Is Phillips School overcrowded, Mr. Johnson? A. Phillips at the present time is beginning to get back to capacity that they can handle with mobile units.

Q. You're busing 100 students out of Park Hill School? A. That is correct.

Q. Is Park Hill School overcrowded, Mr. Johnson? A. Park Hill, I think, with the 100 being transported, I think the program at Park Hill is a very efficient program.

Q. Now, you mentioned in your testimony the Doull School was a good example of how mobile units are used. Do you recall that testimony? A. Yes, sir.

Q. Doull is down here, is it not? A. Yes, in that area.

Q. And I believe you said that Doull—that it was [538] expected that Doull student enrollment would decline? A. That is correct.

Q. And that's why the mobile units were brought in to cover this temporary situation? A. That was our attempt.

Q. Well, I take it that is not your meaning, Mr. Johnson, that it is expected that the student population in Northeast Denver is going to decline? A. We doubt very much that it will decline.

Q. So there is really not much of a corollary between what happened at Doull and what's happening in Northeast Denver, is there? A. Not from the standpoint of expectation.

Q. Now, do you consider the presence of mobile units to be an indication of overcrowded schools? A. Mobile units are a facility to be used in the case of an overcrowded school.

Q. Are these schools then schools which have an excess number of students? A. That is correct.

Q. Now, you recall, do you not, that guideline that the Board of Education passed in June of 1967 regarding the construction in Northeast Denver? A. Yes.

Q. And you recall that there was another facet of that [539] guideline, was there not, that concerned transportation? A. The guideline centered around the—no additional building in that particular area. But, on the basis of getting relief, and, of course, transportation, transporta-

tion or double sessions would be the only provision that we could have.

Q. I'm handing you Plaintiffs' Exhibit 29—

Mr. Greiner: Is 29 in evidence?

The Clerk: Yes, it is.

Q. —which is in evidence, Mr. Johnson. Page 15 thereof contains the exact language, does it not, of this guideline? A. Yes. You're referring to the specific statement that "follow existing Denver Public Schools Policy 1222C and 1226A with the additional guidelines, no new building or additions in Northeast Denver, transportation of excess students to other instructional schools in the district"? Those voting yes were—

Q. It passed, is that right? A. Yes.

Q. Now, that was in June of 1967? A. That was June 29th.

Q. And by that time we had 12 mobile units at Smith? A. They were there at that time.

Q. And we had 4 mobile units at Stedman? [540] A. That is correct.

Q. And I think we had some mobile units at Phillips, too, didn't we, then? A. At Phillips we had two, as I recall.

Q. And those schools had excess students? A. That is correct.

Q. And it was the policy of the Board to bus out those excess students, is that correct? A. That is right.

Q. Now, you didn't take it though that that policy guideline—that that guideline had anything to do with the removal of those mobile units? A. It was not stated, however, I think it was referred to that we were to transport

and try to equalize—to lower the membership in that particular area and transport elsewhere if possible.

Q. That objective wasn't achieved, was it, Mr. Johnson? A. No, sir, it was not achieved.

Q. You mentioned the opening of Traylor School. A. Yes.

Q. That's a school in Southwest Denver? A. The very southwest part of the city.

Q. It opened in January of 1968? A. Yes, sir.

Q. With a capacity of approximately 750 students? [541] A. Yes, sir.

Q. Before Traylor was opened—and Traylor is right here, is that right? (Indicating on Exhibit 7.) A. That is correct.

Q. Now, before Traylor was opened, where did all of the students down in this area go to school—elementary school? A. Those pupils were transported to University Park.

Q. Now, just a minute. Let me find University Park. A. I think it's directly below South High School.

Q. All the way from here over to here. All right. How many of them were at University Park? A. I imagine University Park had around 350 or 400 of those.

Q. Were they also at Cory? A. University Park and Asbury, those groups particularly, although we had some from that general area to Cory as well. They were all involved in the Southwest Denver transportation. Cory was involved in Asbury.

Q. So you had Asbury, University Park and Cory? A. Yes.

Q. And altogether about how many students did those three schools have, Mr. Johnson? A. I would imagine in the final—

Q. From Southwest Denver? A. From Southwest Denver, there were approximately [542] 800—roughly 800 pupils; 750 to 800.

Q. Okay. Now, up here in Smith, you had 12 mobile units? A. Yes, sir.

Q. About 360 children? A. Yes.

Q. And at Stedman you had 4 mobile units? A. Yes, sir.

Q. About 120 children? A. About that.

Q. When Traylor opened, all of these students that you have described at Asbury, Cory and University Park, they were—they went to Traylor, is that right? A. Yes.

Q. Didn't that open up a few vacancies, Mr. Johnson, at a school like University Park? A. Yes, sir, it did.

Q. About 350 vacancies? A. Yes, approximately that, although those schools, as a result of the Southwest Denver, were slightly overcrowded. But I would say roughly 350.

Q. You had about 40 vacancies at Cory? A. Forty, about, at Cory.

Q. And about how many at Asbury? A. Probably about —roughly 100 on the basis of [543] capacity.

Q. So that is nearly 400—nearly 500 vacancies down there? A. I would say approximately 500 as a result of that.

Q. Now, it's also true, isn't it, that you had some slight overcrowding at some predominantly Anglo elementary schools in this area? A. We had some there.

Q. And you relieved some of this overcrowding in these predominantly Anglo schools by transferring Anglos—a few to Asbury, some to University Park and some to Cory, is that right? A. That is right.

Q. Now, this was also the time when you started busing

36 black children from Phillips, isn't it? A. Yes, 36 would be the approximate number.

Q. And they were all sent to University Park? A. That is correct.

Q. Now, even after you adjusted the balancing here, the over capacity and underutilization of those Southeast Denver schools, Cory, University Park and Asbury, how many spaces did you still have left, Mr. Johnson? A. In addition to this, we had an excess number on the basis of new annexations in the Southeast—in Southeast Denver and part of those spaces were utilized in these schools [544] on transportation again across the city. I think at the present time we do have available space in University Park. We hope some in Asbury and some in Cory and these are some of the schools that we are hoping to use on the basis of voluntary enrollment.

Q. But you had about 350 predominantly black children up here in Northeast Denver? A. That is correct.

Q. In overcrowded schools? A. That is right.

Q. And you had an opening down here of about 500 spaces, is that right? A. I think that's a little high when we consider—but let's say—

Q. About 500? A. About.

Q. And you got 36 of those black children down here to University Park, is that right? A. That is correct.

Q. And a few more, I think—about 40 more from Phillips into another one of these schools? A. Into University Park, Cory School, Smith School. That is correct.

Q. And all the other black children were left up there, is that right, Mr. Johnson? [545] A. That is right, and—

Q. All right. Now, you mentioned in your testimony on Friday—you will recall that the policy that the Board passed about improving the ethnic distribution at schools

by means of boundary changes. A. Yes, sir.

Q. That is Policy 1222C, isn't it? A. That is correct.

Q. And that is in evidence as Exhibit 33.

Now, 1222C says the policy of making, to the extent possible, a heterogeneous school community— A. That's one of the items in the policy.

Q. Now, I believe you cited as an example of that a boundary change between East and George Washington High School? A. That is correct.

Q. That boundary change involved, did it not, what had previously been an optional area between East and George Washington? A. As I recall, a portion of it was, and then a small portion of it was formerly in East District.

Q. Now, the area that we're talking about—this is the area right up here, isn't it? A. Yes, sir.

The Court: Right where? I mean, what's the street?

[546] Q. Do you recall what street it is? A. I don't have it before me but it went up to 32nd, the official boundary line, as I recall.

Q. That is correct. Did it go down as far as Colfax? Is it from Colfax to 32nd? A. Approximately Colfax.

Q. And this area had been predominantly an optional transfer area between East and GW?

Mr. Creighton: Excuse me, Your Honor. Would counsel indicate with a little more precision both for the record and for me over here when he indicates.

Q. This area that you have described between Colfax Avenue and 32nd, shown here on Plaintiffs' Exhibit 7, that

was an optional area between East and George Washington High Schools? A. Yes, the majority of it was. However, it also encompassed some area that was formerly East.

Q. All right. Now, the boundary change you're talking about was that the northern boundary of George Washington was moved from Colfax up to 32nd? A. Yes.

Q. And you stated that that was a change, as I recall, that contributed to a heterogeneous school community, is that correct? A. I indicated this was a move in that direction. And, [547] if I may amplify this particular point—

Q. Well, I'll give you a chance to answer the questions. A. Very good.

Q. Now, the elementary schools in this area that got picked up in the George Washington boundary—what elementary schools served that area, Ashley? A. Ashley would have been one.

Q. Montclair? A. And Montclair—part of Montclair.

Q. Ashley and Montclair are predominantly Anglo schools? A. Yes, sir.

Q. They were then, weren't they? A. They were at that time.

Q. This boundary change was effective in September of 1964? A. In 1964 it went into effect.

Q. Now, is it fair to characterize that neighborhood that got brought into George Washington in 1964 as being a predominantly Anglo neighborhood, Mr. Johnson? A. At that time.

Q. Do you recall how many Negroes there were in George Washington High School before that boundary change? A. Before that boundary change, as I recollect, we had about 10 Negroes in George Washington in about 1963.

[548] Q. Your recollection is pretty good. You had 9, Mr. Johnson.

Now, after that boundary change, do you have any recollection of how many Negroes there were in George Washington? A. I don't know immediately after the boundary change.

[549] Q. 1964? A. 1964, I would imagine probably around 20 or 25, and now about 85.

Q. Your recollection is very good. It went from nine to 20 and this was a boundary change that you believe contributed to the heterogenous school community, is that right? A. Yes, sir.

Mr. Greiner: No further questions.

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[585] * * *

Recross-Examination by Mr. Greiner:

Q. Mr. Johnson, with respect to that boundary change at George Washington and East— A. Yes, sir.

Q. We covered the fact yesterday, I believe, that that boundary change added eleven Negroes to George Washington. A. I don't recall the exact number but it was somewhere in the neighborhood of ten to twenty.

Q. I think we failed to cover the fact, didn't we, that it added 205 Anglos to George Washington? [586] A. There was an increase. I don't recall the exact number.

Q. And George Washington today is still about 96 percent Anglo, is that correct? A. Yes, approximately 96 percent.

Q. Now, I beileve with respect to the junior high schools, on redirect examination you testified, Mr. Johnson, that the purpose of the Cole-Smiley boundary changes was

again to add to the heterogeneity of the populations in those two schools, is that correct? A. I had included one other school and that was Gove. That was a combination of Gove, Smiley and Cole, three schools involved.

Q. Let's focus on Smiley. It is my understanding in 1963 Smiley was 46 percent Anglo, is that correct? A. I believe that is correct.

Q. And in 1964 it was 40 percent Anglo? A. About 40 percent.

Q. And in 1963 Cole was 10 percent Anglo? A. Approximately.

Q. And after the boundary change it became 9 percent Anglo? A. It would have remained about the same.

Q. So those boundary changes made those schools blacker, did they not? [587] A. Let's say there is no reason they should be blacker because we did take quite a number of the Negro students into Gove. However, during this period of time there was certainly an increase in the populaton in those areas and Negro population. It was not the result necessarily of boundary change; it was the result of mobility into those areas that caused it, because we did take—we did take a percentage of those black students from that particular area and put them in Gove and increased it, so I would say proportionately that because of the increased population, the black population, this would be true, and the main effort at that particular time, as has been since that time, is to relieve the membership of Smiley Junior High School, as well as Cole.

Q. Well, Mr. Johnson, you don't mean to tell me, do you, that it was even thought that as a result of the boundary change there would be more Anglos in Smiley or more Anglos in Gove? A. As I indicated in my statement that the real—the primary purpose of the boundary changes

in 1964 was a resolution passed by the Board. At the same time that the boundary lines were changed, this resolution, stating that we should eliminate all optional areas, this was the primary purpose of the boundary change in 1964, to eliminate the optional areas.

[588] Q. You testified, Mr. Johnson, that when Traylor opened up, it created some 500 spaces in the Southeast Denver schools, is that correct? A. I indicated that there were approximately that number that were transferred from the South Denver schools back to Frank A. Traylor, yes.

Q. Now, you had some other students in annexed areas that you had to accommodate, is that correct? A. That is correct.

Q. So you put them all in the Southeast Denver schools, is that right? A. In the schools named, South and Southeast Denver.

Q. Well, now, I—and those schools are overcrowded today? A. You are speaking of the schools generally in that area or are you specifying these three schools?

Q. Well, Exhibit R shows that University Park is somewhat overcrowded, is that right? A. Yes, on the basis of normal capacity, slightly.

Q. Even today, is University Park overcrowded to the degree that Stedman is overcrowded? A. No, sir.

Q. There aren't any mobile units at University Park, are there? A. Not at the present time.

[589] Q. How about Cory, Mr. Johnson? A. No mobile units.

Q. And it's not nearly half as overcrowded as Stedman, is it? A. That's correct.

Q. What about Asbury, Mr. Johnson? A. That is correct.

Q. Any mobile units at Asbury? A. No mobile units at Asbury.

Q. I direct your attention to what's been marked for identification as Defendants' Exhibit 89. Can you identify that exhibit for us?

Mr. Creighton: 89?

Mr. Greiner: 89.

Mr. Creighton: That's plaintiffs' exhibit.

Mr. Greiner: Pardon me, Your Honor. Force of habit.

A. I can't identify this as an exhibit as such. It appears as though this is a plaintiffs' statement and taken from sources of three sources. So I don't recognize the exhibit as such, but I assume that the data included came from those sources. This is the first time I have seen this particular statement.

Q. Do you recognize the sources? A. (No answer.)

[590] Q. They are all from the public schools system, aren't they? A. Yes, I recognize the sources. Evidently there is a typographical error on one of these, if the source is stated correctly, and that is that there is no office of the Assistant Superintendent for Personnel Services as of May 1, 1969.

Q. That's right. That should probably be 1968. A. Well, I don't know whether the date is incorrect or whether the title is incorrect. That is, it would be the Executive Director for Personnel Services. So either the date is incorrect or the title of the office is incorrect. I'm not sure which.

Q. What does that Exhibit 89 purport to show, Mr. Johnson? A. 89 purports to show the L.O.E., which would be Limited Open Enrollment.

Mr. Creighton: Your Honor, now that we know what this exhibit is about, it seems to me it goes beyond the scope of redirect. This is limited open enrollment. This has been covered earlier.

The Court: Well, true, but—

Mr. Greiner: Your Honor, we offer Plaintiffs' Exhibit 89 for the purpose of showing that in September of 1968 according to this exhibit there were 482 extra seats in [591] Anglo schools, even after the absorption of all of these annexed areas, and we offer it for that purpose.

The Court: I think it's relevant in view of the way the examination has gone. I mean—

Mr. Creighton: It wasn't apparent.

The Court: On redirect you introduced some fresh facts today, I take it, that had not been referred to at all.

So it will be received.

(Whereupon, Plaintiffs' Exhibit 89 was received in evidence.)

By Mr. Greiner:

Q. With reference then to Plaintiffs' Exhibit 89, Mr. Johnson, how much under capacity is there stated there for the listed schools? A. It is listed here 482.

Q. What is the average percent of Anglo enrollment in those schools, Mr. Johnson? A. This exhibit shows 93.

Q. And how many Anglos are being bused into those schools? A. 1,071.

Q. And how many Negroes are being bused into those schools? A. 121.

Q. Now, I call your attention, Mr. Johnson, to what's been marked for identification as Plaintiffs' Exhibit 90,

[592] purporting to show the limited open enrollment space in predominantly Negro or Hispano elementary schools in 1968. Can you identify that exhibit for us? A. Not the exhibit as such, and I have the same comment as I had on the other—regarding the other one.

Q. And Exhibit 90 shows the spaces in the minority schools whereas Exhibit 89 showed the spaces in the Anglo schools, is that correct? A. That's correct.

Mr. Greiner: Your Honor, we offer Exhibit 90.

The Court: Has Mr. Creighton seen this?

Mr. Greiner: Yes.

Mr. Creighton: Well, let me look at it. I don't seem to have it.

No objection.

The Court: 90 will be received.

(Whereupon, Plaintiffs' Exhibit 90 was received in evidence.)

Q. Now, Mr. Johnson, Plaintiffs' Exhibit 90 shows, does it not, that in September of 1968 there were 270 spaces available in the minority schools. A. It shows this, yes, sir.

Q. How many of the Anglo children from the annexed areas, Mr. Johnson, were placed in those vacancies? A. (No answer.)

[593] Q. None. Isn't that right, Mr. Johnson? A. I do not recall that we have any annexations— Normally, annexations have been in the Southwest and Southeast Denver area, as I recall.

Q. Well, isn't it true, Mr. Johnson, that when you were trying to accommodate the children from annexed areas, these are Anglo children, are they not, Mr. Johnson, basically? A. Basically.

Q. Now, when you were trying to accommodate those children, how far did you bus them? A. We attempted to bus them to the nearest elementary school that had vacant spaces.

Q. Some of those bus rides were as long as ten miles, weren't they, Mr. Johnson? A. I think the longest one was from Southwest Denver to the Asbury, University Park, Steele and Cory.

Q. In response to a question from the Court, Mr. Johnson, you indicated, as I understood it, that some of the elementary schools in Southeast Denver were on double sessions, is that correct? A. Had extended days.

Q. Pardon me? A. Extended days, and double sessions; an overcrowding.

Q. What is the difference between an extended day and a double session? [594] A. An extended day is very often accomplished by starting the school day slightly earlier in the day and extending longer, as in contrast with actually two groups of students coming at a particular time.

Q. Now, how many of those Southeast Denver Anglo elementary schools were on extended days in— What is the appropriate time to look at this? In January, 1968, as opposed to September of 1968? A. I would say that the appropriate time would be to—I imagine that the height of this would probably be in about 1966-1967, from the standpoint of the greater number.

Q. Well, I thought you told the Court, Mr. Johnson, that when Traylor opened up and that was in January of 1968, is that right? A. That's correct.

Q. That you had Southeast Denver schools on double sessions. Now, is that or is that not the fact? A. That is an incorrect statement on my part. They were overcapacity. There were no double sessions.

Q. And there were not even any extended sessions, were there, in January of 1968? A. There were some in the kindergarten group.

Q. Where, Mr. Johnson? A. I can't state right at the moment.

Q. You said that Steele was overcrowded. [595] A. It was necessary to relieve Steele of further crowding because we had reached the capacity.

Q. How overcrowded was Steele, Mr. Johnson, in September of 1968? A. I don't have the figures before me but I know it was necessary to eliminate transportation into Steele, and we were able to take some of those pupils and keep them in the Southwest Denver schools.

Q. How many mobile units did you put in at Steele to relieve that overcrowding? A. There were no mobile units in that area.

Mr. Greiner: No further question, Your Honor.
Mr. Creighton: No questions.

* * * * *

Mr. Jackson: Call Dr. Robert Gilberts.

Robert Gilberts, [596] recalled as a witness by and on behalf of defendants, having previously been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Jackson:

The Court: You have already been sworn, Doctor. Just take the witness stand.

By Mr. Jackson:

Q. Dr. Gilberts, what is your present position with the Denver Public Schools? A. I'm the Superintendent of Schools.

Q. And would you describe briefly for the Court, please, your responsibility in that position? A. My responsibility is to administer the Denver Public Schools within the general guidelines of the Board of Education's policy and within that context, to provide the best possible quality of education to all the students in the school district.

Q. How long have you been superintendent in the Denver Public Schools? A. From August 1st, 1967.

Q. And what was your employment prior to that? A. I was Superintendent of Schools in Madison, Wisconsin.

* * * * *

[597] * * *

By Mr. Jackson:

Q. Dr. Gilberts, as you heard, there is one comment on this that I placed thereon that reflects current membership in a national committee, FAASA. Would you explain to the Court and counsel what that means? A. This is a national commission from the American Association of School Administrators to look at the state of preparation of school superintendents throughout the United States and to make recommendations for changes in programs.

[598] Q. And you are presently a member of that commission? A. Yes.

Q. And what is the number of members on that commission? A. I believe there are nine members on that commission.

Q. Dr. Gilberts, how do you personally view the position of the Superintendent of Schools in Denver today? A. Well, I think that the Superintendent of Schools in any urban center today is faced with a rather major problem of looking at how one might reconstitute the entire processes of education for children in order to improve its effectiveness

and certainly a major element is that—of that is dealing with the problems of underachievement in those schools that have been referred to in this trial.

[599] Q. I think it is important for you to advise the Court as to how you would define the word "integration" as we have heard it. A. I would accept Dr. Dodson's definition that integration is a psychological willingness of people to accept people of all races without prejudice.

Q. Does this then form a part of your general overall view of restructuring the educational process? A. Yes, it does. I think this is extremely important in dealing with the problems in our entire society.

Q. Do you identify any particular problems in this area? A. Yes, there are many problems in this area, the problems of how one best goes about accomplishing this in a city the size of Denver or any city, for that matter. There is tremendous diversity of opinion as to how one can accomplish this end. There are those who believe the only way it can be done is through racially balancing the schools. There are others who feel that other kinds of systems and techniques can be used to provide vehicles for modifying the values and attitudes of people within the school system.

Q. Would you describe briefly some of these other systems? A. Well, I believe that within the entire process of [600] education there are many possibilities for doing this. We have within our school system presently several programs that are under operation as the result of the advisory committees, one being the cultural arts program, the cultural understanding being the second one, wherein youngsters are given the opportunity to look at arts and various kinds of cultural contributions of people from different backgrounds and to understand their origins and

the meaning of them and to relate one to another in some physical proximity.

I believe Dr. Dodson indicated that he felt, also, that it was necessary for a youngster—

Mr. Greiner: Your Honor, I do object to this witness summarizing what Dr. Dodson has said.

Mr. Jackson: If the Court please, I believe the witness is merely attempting to answer the question in relation to the facts of this case.

The Court: Overruled. We may proceed.

The Witness: I lost my track. I forgot where I was going at the time.

Q. You were discussing other systems for achieving this. A. I talked about the cultural arts program and cultural understanding programs, which are examples of ways in which this can be accomplished.

Oh, and I certainly accept the fact that some kind [601] of physical proximity of youngsters in this process is extremely important as a vehicle for accomplishing these changes in attitudes and values that are so necessary in our society.

Q. You mentioned racial balance, Dr. Gilberts. How does this fit into your view of the problem? A. I do not believe that racial balance as such is necessarily the only answer or the only approach to achieving integration as I have defined it. I think there are many other ways and I think that certainly the schools are not the only institution in our society that have responsibility of achieving that end, though we do have a major role, I believe, to play in that process.

Q. Is there, in your opinion, any one approach that must

of necessity be successful? A. No, I don't believe that there is any one approach that can be successful. I think conditions are so varied in these United States that there must be a number of ways in which the solution to this problem can be undertaken. If one assumes that there is only one approach, for instance, racial balance as such, then many of our major cities are already lost. There is no possibility of changing them. And I personally or professionally am not willing to accept that as an end.

Q. After your arrival in Denver in 1967, Dr. Gilberts, [602] Resolution No. 1490 was subsequently passed by the Board of Education, was it not? A. Yes.

Q. And what was your specific responsibility under that resolution? A. Well, this resolution called upon me to present a comprehensive plan for the integration of the Denver Public Schools by September 30th, I believe it was, and there were a number of other kinds of considerations within that resolution, which were added to provide some kind of guidance in developing that plan.

Q. Subsequent to that resolution, did you prepare such a plan? A. Yes, I did.

Q. You have before you what has been marked for identification purposes as Defendants' Exhibit D. Can you identify that? A. This is the copy of the plan which was presented to the Board of Education and to the community in the early part of October.

Q. And this is the plan which you submitted to the Board in response to the Resolution 1490? A. Yes, it is.

Mr. Jackson: At this time, we would offer Defendant's Exhibit D, Your Honor.

[603] Mr. Greiner: We have no objection, Your Honor.

The Court: D is received.

(Defendants' Exhibit D was received in evidence.)

Q. Dr. Gilberts, would you describe generally the concept of your plan now received as Defendants' Exhibit D?

A. Well, in devising this plan, we looked at the overall problems of an urban center and all the kinds of systems that we thought we could identify that might contribute to the improvement of the general quality of education throughout the school system, and the major portion of this, as I indicated before, was providing for experiences that would be integrating in nature and provide for integration in the Denver Public Schools.

Basically, we took a look at the format of education in an urban center. One of the major problems, I believe, in the restructuring of education in urban centers is taking a look at the way in which the schools relate to the publics that they serve. One of the major difficulties in large school systems, it is my opinion, is the remoteness with which the school functions in the community, so we began taking a look at a way in which we could restructure the organization of our schools to enhance opportunities for integration, ways of involving the community in the operation of their schools, and at the same time restructuring the [604] physical school organization to provide better educational kinds of experiences for children. We had felt that the proximity of the school and the relationship of the school as one of the basic institutions in the community to those people it serves is an extremely important one.

There is a very interesting article that came out after

this plan had been developed, written by Dr. Dioxydis, who is an internationally-known and renowned city planner, in the mid-December, 1968, issue of the Saturday Evening Review. The basic thesis of this article was that, since the beginning of time, man has up until recently enhanced the opportunities of man to relate to additional institutions and to additional individuals, but only recently have we begun removing some of the more immediate kind of institutional relationships which are important in an urban setting and life for all of us. Therefore, we looked at ways in which we could devise an organizational structure, not as the result of this article, but using the same general concept, which would provide for expanding opportunities for children to relate in different ways to the education institution and at the same time, as indicated, provide for integrating experiences within our school system.

Within this kind of structure, we provided for the reorganization of schools to press out the decision making responsibility further from the superintendent's office, to [605] allow the teachers, principals and community members more effectively to influence the kinds of decisions that were made in determining educational programs, and hopefully through that to provide a closer sense of relationship between community and staff and students with the school itself. This restructuring also involved the reorganization of kinds of services that might be provided through the school.

We felt, for example, that many of the community agencies presently operating independently might very well be coordinated through this kind of an organizational structure and that many of the services that presently are operating quite independently and sometimes causing many

gaps in services that are necessary to people and sometimes overlap, that through this organizational structure we might effect that.

We also provided within that organizational structure, keeping consistent with what we felt was important in the reorganization, such as proximity, geography, number of schools, size, et cetera provided opportunities for planning new kinds of educational opportunities within these structures which would enhance general education as well as trying to get at the integrational opportunities that I know are important.

Q. When you speak of the integrational opportunities, are you referring now to the opportunities as consistent with [606] the definition which you have just given this morning? A. Yes, I am.

Q. So the plan then is really a proposal for quality education as opposed to any finite, refined plan for specific movement? A. Yes, the entire plan was a conceptual type of plan and in the period of time in which we had to produce this, which I believe I indicated was about sixty working days during the summer months when a good many staff members were not available to us, and this is always a difficult time to put something like this together, we did not spell out all of the details, all of the concepts that are included within it, and there is a great deal of work, for instance, in refining the concept of the complex as a functional unit within the school system, as well as many other elements within the plan.

Q. Directing your attention, Dr. Gilberts, to Page 32 of Exhibit D, what general heading is contained on this particular section? A. "The Elementary Model School Complex."

Q. And would you explain, please, generally, what that

concept is? A. Well, I think that if one would refer to the schematic just after Page 35, that it would describe this. It really is a grouping of schools or a consortium or [607] whatever you would like to call it within which we would provide a special supporting educational center for special educational opportunities. In addition to this, these schools would become a part of administrative units so that educational programs could be planned both within the schools and between the schools and could be coordinated at the local level with a complex structure. We had expected within this complex to develop many kinds of supporting and exemplary educational programs that we felt could lend support to all the concepts we were talking about, integration certainly being one of them, but also the general improvement of educational experience for the youngsters within these complexes.

We saw the opportunity here within the organizational structure to begin involving in an advisory way, more effectively in an advisory way, I should say, the members of the community that are affected within these complexes and to leave the complex director a good deal of latitude in terms of decision making as it related to programs within these schools. Obviously, the superintendent's office and supporting staff would make a contribution to both planning and supervision and evaluation. Within this center we have identified a number of items that we thought might be relevant. Now, as we get into our specific planning, we may find others more imporant. We may find that we want [608] to change the configuration of this as we look at it. I assume there will be some differences between complexes around the city in terms of needs of those areas.

Robert Gilberts—Recalled—for Defendants—Direct

Q. Did you in your planning tentatively divide the elementary schools of the city into various groupings or complexes? A. Yes, we did.

Q. Directing your attention to the map which appears between Pages 107 and 108 of Exhibit D, Dr. Gilberts, can you identify that portion of the exhibit for us? A. Yes, these were the tentative identifications of complexes throughout the city, grouping schools in the best way we felt we could to accomplish all of the purposes that we had set forth as being important.

The Court: What exhibit is this?

Mr. Jackson: Exhibit D, Your Honor.

The Court: Still Exhibit D?

Mr. Jackson: Yes.

Q. Now, Dr. Gilberts, directing your attention to Plaintiffs' Exhibit 6, and in particular to Resolution No. 1533, which appears at the back of that exhibit, would you please read for the Court, Point 1 of that resolution? A. "Superintendent is directed to continue the development of plans in accordance with the concept of the elementary school complex as outlined in his report entitled [609] 'Planning Quality Education' heretofore received by this Board of Education and to initiate voluntary implementation of such plans commencing with the opening of schools in September of 1969 for the following groups of elementary schools of this district to be known as Complex 1 and 2."

Under Complex 1 is a list of schools that were included in it and under Complex 2 the same.

[610] Q. Are those groupings of schools as contained in Resolution 1533 the same as are shown on the maps which we have previously alluded to in the Exhibit D occurring between Pages 107 and 108? A. Yes.

Q. What is the specific purpose of this particular complex arrangement as shown here in Point 1, Dr. Gilberts? A. Well, the purpose is to begin the more detailed planning of the organization and operation of these complexes. It is a concept that needs a great deal of development and we felt that these two complexes would provide us a basis for organization and planning and testing.

Q. Is the Point 1 in Resolution 1533 consistent with your overall planning of quality education? A. Yes, it is.

Q. And will this involve the community in any way? A. Yes, it will.

Q. Generally, in what respect will the community itself become involved in this—in these complexes? A. We intend to involve the community in all the organizational elements, that being a part of all—first of all, in the planning process. One of the parts of the planning process is to identify an effective way of involving the community in a continuing basis in the terms of general operations of these complexes and the schools within them.

[611] Q. Directing your attention, Dr. Gilberts, to Point 4 of Resolution 1533, would you read that for us, please? A. "For the purpose of improving education and furthering the integration of schools included in elementary school complex 5, as described in the report 'Planning Quality Education,' such schools shall be grouped for cooperative planning with the elementary schools of other elementary school complexes as follows, or with such other or different schools as the superintendent may designate from time to time, utilizing the criteria of ratio of school and group memberships, racial composition of memberships, potential for promoting educational understanding, and utilization of school facilities; that such cooperative planning shall be accomplished by the local schools included within such

groupings through planning committees composed of school staff members, P-TA representatives, parents and other citizens in the school community; that such planning committees shall be selected and shall operate under rules and regulations prescribed by the superintendent; that any cooperative plans so developed shall be mutually agreed upon by such committees prior to the implementation thereof; that implementation of such cooperative plans may be undertaken by the superintendent within the limitations of law and the policies of this Board of Education; and that participation by individual families shall be optional."

[612] And then it lists the schools in Complex 5 and those that they are grouped with.

Q. And the listing of schools in Complex 5—it's the same as that shown on our map, again, in Exhibit D? A. I believe so. I'm not—yes, I believe it is.

Q. Now, was this matter of pairing specifically proposed in your overall plan for quality education? A. No, it was not. This particular proposal came out of the discussions that were held with the members of the community and Board of Education. It was something that we could embark upon immediately. In my plan I had recommended that the schools in Area 5 be operated at the pre-school, kindergarten, and primary levels with the students in the fourth, fifth, sixth, seventh, eighth and ninth grades transported out to other schools within the city. Manual High School in that area at the same time being developed as a special magna type school, which we are proceeding with at the present moment. But this was not something that could be accomplished immediately. It would require some additional facilities rather than waiting until we had

money through a bond issue to accomplish it, this was something that we could do right now.

Q. Is the objective under this pairing concept the same as under the complex concept as contained in Point I of this resolution? [613] A. No, not exactly. The planning here will be done jointly with the schools involved in this. However, it will be on a school-to-school basis rather than on an organized intermediate kind of administrative unit.

Q. Is the pairing concept as contained in Item 4 here consistent with your overall plan? A. Yes.

Q. Dr. Gilberts, generally speaking, are there any other educational programs within your plan, Exhibit D, which provide for enhanced educational opportunities in interracial communication? A. Yes, there are quite a number. We have talked in this plan about the need for changing curriculum to provide for general application of knowledge and information with respect to minorities in our culture. We have had proposed in this a ballerette outdoor education center which we hope to have space for approximately a thousand pupils at a time which will be, we hope, in the very near future; a live-in kind of educational setting. We are now in the process of working on that. We have the land and are working in the development of it, both program and facilities. We have proposed an expansion of cultural arts kind of program within the context of this plan. At the junior high school level we talked also about a complex arrangement very much like we have at the elementary level. The senior high school level [614] —we have made a recommendation that there be a secondary school complex dealing with specialized educational offerings both general and vocational and technical to which students from all the senior high schools throughout the entire city—to which the students from all the senior

high schools throughout the city could go. I think there are probably a number of other minor elements in there, too. There are many, many ideas.

Q. Now, Dr. Gilberts, directing your attention once again to Resolution 1533, I'd like to direct your attention to Paragraph No. 5 in that resolution and ask you if you would read that to the Court, please. A. "The present practices of transporting pupils from the attendance areas of schools of this district deemed to be overcrowded in other schools of this district, whenever necessary to relieve such overcrowding, be continued."

Q. Would you explain the purpose of this to the Court, please? A. Well, the purpose of this is to allow us the latitude to move youngsters from facilities that are overcrowded to other facilities where we have space. And it is our intention to pursue this particular policy throughout the city. I might throw in here an example as Mr. Johnson was talking about the readjustment of space throughout the central part of the city. Before this plan was put out, [615] another reason was to provide spaces in more schools to be utilized for both voluntary and for the relief of overcrowded schools. However, the Resolution 1490 intervened before any such plan could be undertaken.

Q. The determination as to when a school is overcrowded within the context of this paragraph, is that based on the strict formula approach that we have heard? A. No, I believe it's been discussed also as a matter of looking at the kind of program that we feel is necessary for that school and then judging the amount of space, classroom space that is necessary for pupils to implement that program.

Q. Now, Dr. Gilberts, directing your attention for a moment to Defendants' Exhibit P, which is before you,

can you identify that document? A. Yes, it's the Board minutes of April 25, 1968.

Mr. Jackson: At this time, Your Honor, we'd like to move the admission of Defendants' Exhibit P.

Mr. Greiner: No objection, Your Honor.

The Court: P will be received.

(Whereupon, Defendants' Exhibit P was received in evidence.)

Q. Dr. Gilberts, directing your attention to Page 5 of those minutes at the bottom of the page, would you read what appears there to the Court, please? A. The last paragraph?

[616] Q. Yes. A. "Superintendent Gilberts referred to Resolution No. 1486, adopted on January 18, 1968, by the Board which authorized funds for the purpose of providing accommodations for the junior high school pupils of the district and for relieving crowded conditions at Smiley Junior High School. He read from the resolution as follows:

'Now, therefore, be it resolved by this Board of Education that upon the payment of all amounts and obligations incurred or to be incurred by this school district in connection with site acquisition, construction and equipping of Jessie M. Hamilton Junior High School, not less than 80 percent of the capital reserve fund of this school district and such amounts as may be recorded therein from time to time shall next be expended for the provision of necessary facilities for the specific purpose of providing relief from the excessive pupil population of Smiley Junior High School and for the general purpose of assisting in the accommodation of junior high school pupils of the school

district. Such facilities will be located in a manner so as not to contribute to the further increase of de facto segregation.'"

Q. Did you make specific recommendations to the Board based upon that resolution? A. Yes, I did.

Q. Would you explain to us what those were, please? [617] A. Well, I recommended that there be an initial twelve classrooms added to Jessie M. Hamilton immediately to provide relief for Smiley in the second semester; also to provide some relief for Hill Junior High School. I also recommended that a new high school be built at East Florida and South Quebec after which is now named Place Junior High School, which would provide further space for the relief of junior high schools in the area and the opening of spaces for the further relief of Smiley as a junior high school and also possibly Cole.

Q. Now, were those recommendations acted upon by the Board? A. Yes, they were.

Q. And what were the results? A. It was approved.

Q. Now, was any actual busing of students from Smiley accomplished when Hamilton opened? A. Yes, it was.

Q. And do you recall the number? A. I believe that all told from the Smiley area there was somewhere between 250 and 300 pupils transported to both Jessie M. Hamilton and Thomas Jefferson High Schools.

Q. The Place Junior High School, I believe you referred to as the other high school at Florida and Quebec? A. Yes.

[618] Q. That is in the construction process, is that right? A. It's in the bidding process right now. We hope to have it opened during the 1970 school year sometime.

Q. Will that provide any additional space for busing further students from Smiley? A. Yes.

Q. Dr. Gilberts, referring you back once again to Para-

graph 5 of Resolution 1533, is there any other additional busing taking place at this time for the purposes of relieving the overcrowded conditions of the schools? A. We're moving students from Stedman Elementary School, I believe—that's been mentioned. We are moving students from Phillips Elementary School. Students are being moved on a voluntary basis from the Smiley Elementary School.

Q. And where are these students being transported to? Which area of the city? A. To the south, general south. And south central area.

Q. Dr. Gilberts, directing your attention to Paragraph 6 of Resolution 1533, would you read that for us, please? A. "The superintendent is directed to proceed with plans to reduce the pupil population of Stedman Elementary School to the extent that the four mobile units now located at that school may be used where needed in other schools of this district by soliciting approximately 120 voluntary pupil transfers from Stedman School to other elementary [619] schools of this district having space available and with transportation provided by the district."

Q. Can that same process be utilized to relieve other schools where there are mobile units? A. Yes, it can.

Q. Is it your intent to proceed in that direction? A. Certainly, as we can and as space is available and as one considers the overall space requirement needs for the entire city. Before a great deal can be done in this area it is going to be necessary that we have funds for additional facilities.

Q. Referring again to Exhibit D, your plan for planning quality education, do you have figures within that plan relating to the capital construction cost to fully implement that plan? A. We had an estimate. We tried to quantify

it as best we could within that particular frame of what fiscal dollar requirements would be necessary to implement this plan so that people would have some measurement of that.

Q. Can you find those figures? A. They're in the back here. I believe the total is on Page 99—where we have all of the phases included and throughout the entire plan we estimated at that time approximately $126,900—excuse me. $126,910,000. And this was an estimate.

[620] Q. Generally speaking, Dr. Gilberts, is Resolution 1533 consistent with your overall plan of achieving quality education? A. Yes.

Mr. Jackson: No further questions.

Cross-Examination by Mr. Greiner:

Q. Dr. Gilberts, under 1520, 1524 and 1531, did you as superintendent prepare some statistics as to how many children would receive an integrated education under those resolutions? A. Yes, we did.

Q. Do you recall the total number—what the total number was? A. I'm sorry, I don't without looking at the record.

Q. These were published in the reviews, were they not? A. I believe so.

Q. I am handing you what's been marked for identification as Plaintiffs' Exhibit 10 and 11 and ask you, first, with respect to 10 if you can identify that for the Court, please? A. Yes, this is a publication of the school system summarizing the secondary elements of the plan.

Q. And then Exhibit 11, as I understand it, summarizes the elements of the plan in the elementary schools, is that correct? [621] A. Yes.

Q. And these exhibits were prepared by the school district? A. Yes.

Q. And the review is designated the official publication of the Denver Public Schools? A. Yes.

Mr. Greiner: Your Honor, we offer Plaintiffs' Exhibit 10 and 11.

Mr. Jackson: Your Honor, according to my records, they have already been received.

[622] Mr. Greiner: Now, which exhibit—pardon me, is that correct?

The Court: That is correct.

The Clerk: Yes.

Mr. Greiner: Excuse me.

Q. Which exhibit has the data to which I referred on the total number of students who would be integrated under these resolutions? A. I thought that Exhibit 11 had it, but I don't—

The Court: Which one was that?

A. (Continuing) Oh, yes, here it is on the front page.

Q. Which exhibit do you have reference to? A. Exhibit 11.

Q. And what is stated there, please? A. It says, "This plan will provide integration for 10,102 elementary pupils in 22 schools by the reassignment of 2,001 additional pupils."

Q. Now, have you developed a similar statistic, Dr. Gilberts, for Resolution 1533? A. No, I have not.

Q. Do you have any idea what that statistic would look like? A. It would be impossible to even estimate that at this time until we have these programs in operation.

[623] Q. Is it safe to assume, Dr. Gilberts, that it's going to be substantially less in September of '69? A. Yes, I think—

Q. Than it would have been under these resolutions? A. On a short term basis I think it will be less. On the long term, it is another question.

Q. You discussed your view of what integration means, Dr. Gilberts. At what point in your mind does a school become segregated? A. Well, I don't believe that I have any particular figure in which it becomes segregated. I have defined integration as a social or psychological process. Integration—or segregation, I suppose, might be the opposite of that. I am not sure. That is, a psychological feeling of the opposite of an integrated feeling, but I don't have any particular number at which I would attach a segregated school.

Q. Well, let's take a look at some of the target schools under the rescinded resolutions. Is Barrett a segregated school? A. Barrett has about 90 some percent black youngsters in it, I believe.

Q. That would just about meet anybody's definition of a segregated school, wouldn't it, Dr. Gilberts? A. I would think so.

Q. What about Smiley? It is what? Seventy-five percent [624] black? A. I believe that is correct.

Q. What percent Hispano, do you recall? A. About 12 is my recollection; I could be wrong.

Q. About what percent Anglo is Smiley? A. Seven or eight percent.

Q. Pardon? A. Seven or eight percent. This is an estimate on my part. I am not sure. I would have to see the figures.

Q. It has over a 90-percent minority population? A. True.

Q. Is that a segregated school? A. I assume it would be by most people's definition.

Q. Now, as I understand the complex program as illustrated in Defendants' Exhibit D, which is the Gilberts plan, isn't it true that one of the defined complexes would have a predominantly minority composition?

Do you have that in front of you? Please refer to Page 108 of Exhibit D. I have specific reference to Area 5. A. Would it have a predominantly minority population?

Q. Yes, Dr. Gilberts. A. My recommendation for Area 5 was the transportation of pupils from that area, as I indicated, in the intermediate and junior high school grades, the development of a magnet school at Manual, and then I had also planned to make [625] attractive the pre-school—primary program, so I would assume that, if I could have accomplished those ends, it would not have been a segregated area. It would have been an integrated area.

Q. Well, look at the two extreme right-hand columns on Page 108. Doesn't that purport to show the proposed complex population, the percent minority and percent Anglo? A. As it stands, without having made the modifications I have talked about, because this would not be the percentage if we could do those.

Q. Now, without modification, the racial composition of Area 5 would be 97 percent minority and approximately two percent Anglo? A. I believe that's correct.

The Court: Wait a minute, when you speak of the transportation, you mean that contemplated in these resolutions, 1520, 24 and 31?

The Witness: No, sir, in the plan. In the plan I proposed that Area 5 would have all students in the intermediate and junior high school grades trans-

ported out of Area 5 into other schools, Southeast and Southwest Denver primarily.

Mr. Greiner: Further along that regard, Your Honor, there is an asterisk of some type, isn't there, next to the two-percent Anglo for Area 5, Dr. Gilberts?

[626] The Court: Yes.

The Witness: Yes.

Q. And if you will refer down, what does that asterisk designate? A. "Transportation will be required to maintain integration."

Q. So, you're going to have some mandatory busing? A. This is what I proposed, yes.

Q. Not voluntary busing? A. No.

The Court: This comports with 1533?

The Witness: No, sir, it does not. The element for Area 5 because of necessity here of having additional space to implement this was the pairing of schools in Area 5 with groups of schools southeast and southwest, and that's something we can begin on next fall, but in the long range, if the Board will approve this plan that I have, it will provide for the movement of those youngsters in this area out of those schools to other schools where we have space.

The Court: Essentially 1531 disapproves the use of busing to bring about segregation, doesn't it?

The Witness: To bring about integration?

The Court: Integration.

The Witness: It requires that those programs that are identified with it be voluntary, yes.

[627] The Court: So, this would require changing policy?

The Witness: Yes, it would, if this were to be implemented.

The Court: If you were to carry out this particular plan, I take it?

The Witness: Yes, it would.

Q. Dr. Gilberts, do you have Plaintiffs' Exhibit 6A in front of you? That's Resolution 1533. A. Yes, sir.

Q. Would you refer to Paragraph 5 on Page 4 of that exhibit, please? A. Paragraph 5? Yes.

Q. That paragraph talks about transportation out to relieve overcrowding? A. Yes.

Q. And I take it that, under Paragraph 5, the transportation out of Phillips would be continued? A. Yes.

Q. Is that today or in September was that Phillips busing out voluntary or mandatory? A. It is mandatory.

Q. And is there some busing out at Park Hill? A. I don't believe there is. I think that was a misstatement yesterday.

Q. I am sorry. Is there any busing out at Barrett? [628] A. Not on a compulsory basis.

Q. There is some busing out at Stedman, is there not? A. Yes.

Q. And that's also on a mandatory basis? A. Yes.

Q. There is no busing out at Smith—or, is there? A. There is, but that's on a voluntary basis.

Q. Well, now, Paragraph 5 that I drew your attention to, that talks about mandatory busing out to relieve overcrowding, doesn't it? A. Yes.

Q. Isn't that the purpose of that? A. Right.

Q. How does that square with Paragraph 6 on the next page? Why is the further busing out to relieve overcrowding at Stedman going to be voluntary rather than manda-

tory? A. I imagine that it was stated that way as a matter of Board policy and in their wisdom they felt this is what should be done, and my job is to implement it.

Q. Doesn't the Board have a policy, 1222C, I believe it is —or, pardon me, 1226A—a policy that's been in existence since 1966, I believe,— A. In terms of the transportation to relieve overcrowding?

Q. Yes. [629] A. I believe so.

Q. And that policy calls for mandatory busing, does it not, Dr. Gilberts, not voluntary? A. I do not believe it is stated in quite those terms, but it allows for the identification of youngsters to relieve overcrowding for transportation.

Q. Now, under the complexes proposed in the Gilberts Plan, Defendants' Exhibit D, at what point in a child's school life does he begin to participate in the complex program? Isn't it at grade four? A. Not necessarily. This has not been identified as yet and will be part of the final process.

[630] Q. You're telling me it's going to be earlier? A. It might be.

Q. You don't know yet? A. No, the planning has not been done so I don't know.

Q. Well, weren't these two complexes the subject of Resolution 1531, Dr. Gilbert? A. Yes.

Q. And that was passed in April of this year? A. Yes.

Q. And your planning hasn't progressed very far since then? A. No. Educational planning is rather complex and involves a lot of people and a lot of time.

Q. Now this pairing concept that you had reference to that is contained in 1533, what sort of opportunities for integration, Dr. Gilbert, are implicit or inherent in that pairing plan? A. Here again there are many kinds of

programs, I believe, that can be developed within these schools. We are here involved on the—with the type involved; the teachers and principals and parents of various school areas to identify programs that are educationally sound and are acceptable within these communities so we can get maximum participation in them. Again, these are in the process of [631] being considered by schools; some of them have already done some planning. I couldn't enumerate what all their ideas have been up to this particular point but I am sure there will be many kinds of approaches taken.

Q. So, again, the plans under the pairing are today not very well defined? A. Well, I couldn't say for sure. They may be very well defined in some schools but I couldn't tell you what they are in each of the schools.

Q. Well, now, does pairing include the concept of, say, fourth graders from School A going to fourth grade in School B? A. It could conceivably.

Q. Does it? A. It could, I say.

Q. Are any plans such as that on the drawing board? A. As indicated, I don't know what the specific plans are in each of these schools; therefore I couldn't answer that.

Q. Now that would require some transportation? A. Yes.

Q. And yet participation in the pairing is made optional; is that right? A. Yes, sir. This is the same way in which it is handled in the cultural program, yet, we have about a 99.9 [632] percent participation in it.

Q. Pardon? A. In the cultural arts program where it is left to be optional with parents, here, we have an extremely high percentage of participation in those offered the opportunity. My figure of 99.9 percent is a personal

estimate. I don't have the exact figures on that but I know it should be very high.

Q. It is very clear, though, that, for example, if there is to be a mixing of a particular class, say the fourth grade, it shall be optional? That's the same way 1533 reads, isn't it? A. That's right.

Q. Well, now, when you testified earlier in this case, Dr. Gilbert, you told me what the concept was behind Resolutions 1520, 1524 and 1531. As I understood it it was to achieve some stability in the schools of northeast Denver begnning in the elementary schools and culminating in East High School which is now a transitional school. A. Yes, this was our major objective.

Q. And very clearly I think you recognized, did you not, that it wouldn't do much good to change the racial composition at East High if you didn't also stabilize the composition at Smiley? A. Well, these were all interrelated and any effect [633] in one would have a continuing effect in the higher grades.

Q. And likewise it wouldn't do much good to change the racial composition at Smiley unless you stabilized the racial composition of the elementary schools that were feeding into Smiley, is that correct? A. Yes; as I say, they are all interrelated.

Q. Well, Dr. Gilberts, do you honestly believe that 1533 is going to be—going to accomplish that objective? A. I think I also indicated in the testimony that it's a little early to tell whether or not this kind of an approach will really attract the kind of participaiton that we feel will be necessary to do this. I believe that in the overall context of the approach that we indicated in this general plan, that the involvement of people who are going to be a part of these plans is extremely important and—that is, as a part of

changing attitudes of the community, a certain amount here of involvement and salesmanship in terms of the schools' part is going to be necessary.

I believe the participation of people who do this willingly will be a lot more productive in terms of definition of integration than those who are put into situations who feel personally they are not acceptable to them.

[634] Q. Dr. Gilberts, you are telling me that mandatory integration is bad? A. No, I'm not saying that. I am saying that the other approach, I think, has some real merits and something that needs to be tested, and we are in that process.

Q. That's the only thing you are testing currently, isn't it? As between mandatory and voluntary? A. Well, actually a good number of ideas in this plan are not being tested currently because we have not proceeded with planning far enough to do that; have not gotten full approval from the Board for the entire plan.

Q. That you're not telling me, are you, Dr. Gilberts, that mandatory integration achieved by boundary changes, achieved by cross-busing—you're not telling me that that doesn't achieve the purpose that you set out to achieve in the three rescinded resolutions, are you? A. I did indicate in my testimony that we have some indication that those kinds of changes would stabilize the community. But, whether they will or not, is something yet to be determined.

The Court: Well, this is a secondary approach to mandatory busing, anyhow, isn't it?

The Witness: I don't understand, Your Honor.

The Court: I suppose that these resolutions, the ones in suit here, were the primary policy provisions [635] with respect to attempted integration of these

northeast Denver area schools?

The Witness: In that particular area, yes, sir.

The Court: Now, when those are wiped out, why, you have a second approach. But, it also involves mandatory busing.

The Witness: Some of it does, yes.

The Court: And it couldn't succeed, I don't suppose, without it?

The Witness: Well, sir, I think that still remains to be seen. I have the feeling that if we can develop the kind of program that I think we can, develop the kind of community system of communication that will be necessary, I believe that we can promote a good deal of integration.

The Court: There will be no interracial relationships, will there?

The Witness: Yes, there will be.

The Court: Where will they come from?

The Witness: Because I think in the programs we are talking about, the example given by the attorney here is one that could occur, where schools, grades, may exchange within these schools for differing periods of time. There may be other kinds of educational experiences, [636] field trips, et cetera, that may provide that kind of basis as well. It will take a shorter-term kind of experience.

The Court: But this is all on a voluntary basis.

The Witness: Yes, so far as—

The Court: This would be another variation of this regional approach of yours; on a voluntary basis, communication.

The Witness: I suppose in some sense—although, this is a quite different kind of concept in terms of

the operation of the complexes in this pairing of area 5 in the southeast and southwest schools.

The Court: We will take a short recess.

(Whereupon, the hearing recessed at 10:52 a.m.) [637] (The court reconvened at 11:10 o'clock a.m.)

Mr. Greiner: If it please the Court.

By Mr. Greiner:

Q. Dr. Gilberts, as I understand Resolution 1533, does it provide for the desegregation of any school? A. If the voluntary enrollment plans work as we hope, it could provide for that. There is more specific provision for the special demonstration program at the Hallett School, which we hope to have a major effect upon the members of minority youngsters in that particular school.

Q. But the VOE is voluntary, is it not? A. Yes.

Q. And the Hallett program is to be voluntary? A. Yes, it is.

Q. So, there is no mandatory desegregation under 1533? A. Except—

Q. You understand what I mean by desegregation? A. Now, will you define it for me?

Q. Under 1533, is there any mandatory program whereby any of these schools in northeast Denver which are now predominantly minority are going to change to predominantly Anglo schools? A. No, there is no such mandatory requirement.

Q. Well, aside from the busing out aspect for the [638] purpose of relieving overcrowding, under 1520, 1524 and 1531, approximately how many students were to be mandatorily bused? You might refer to Plaintiffs' Exhibits 10 and 11.

The Court: He said 2,000 more than are presently being bused at one time.

Mr. Greiner: Yes, I would like to also leave the busing out for overcrowding from that figure, Your Honor, is my purpose, if it's possible.

A. I don't believe that is possible, but the number, as I recall, was additionally approximately 2,000 pupils being bused.

The Court: About 12,000 altogether.

The Witness: Being bused in the total school system, approximately.

Q. That's 12,000 out of what 95,000? A. Approximately.

Q. Now, as I understand it, under Resolutions 1520, 1524 and 1531, the new—

The Court: Do you have 1533 before you there, Dr. Gilberts?

The Witness: Yes. Would you like it?

The Court: If you please.

The Witness: It is in the back of that.

Mr. Greiner: I think we have it as a separate exhibit.

[639] The Court: I am sure you have. I think it is one of the earlier numbered exhibits, and I undoubtedly have it noted.

Mr. Greiner: Yes, it is Exhibit 6A. Did the Court have a question?

The Court: No, not right now. Thank you.

Q. Dr. Gilberts, as I understand it, under 1520, 1524 and 1531, the object or the subject of this manadtory bus-

ing program would have been both Anglos and Negroes, is that not correct? A. That would have been both Anglos and Negroes transported, yes.

Q. This is what is known colloquially as a cross-busing program? A. I am sorry, I do not believe I have seen a good definition of cross-busing. I wouldn't classify it as that.

Q. Pardon? A. I wouldn't classify it necessarily as cross-busing.

Q. Let's not get hung up on a term. I take it there were white students sent into black schools. A. Yes, schools that were formerly black, predominantly Anglo when the transition was made.

Q. That's how they got predominantly Anglo, because [640] you were busing Black into them? A. Right.

Q. At the same time busing blacks out of them? A. True, but not to the same schools.

Q. In other words, it wasn't a totally mutual exchange from school to school. A. Right.

Q. Now, on your 1531, as I understand it, Dr. Gilberts, aside again from busing to relieve overcrowding, there is no mandatory busing, is there? A. No.

Q. There are no Anglos being bused into white schools. Anglos being bused into black schools? A. On a mandatory basis?

Q. Right. A. No.

Q. So, if there is to be any reduction, for example, if Barrett is to go from a predominantly black school to a predominantly Anglo school as was contemplated under 1531, that's all going to be done voluntarily? A. Yes.

Q. And is it also true, Dr. Gilberts, calling your attention now to the busing to relieve overcrowding, the busing to relieve overcrowding under 1533, is that essentially the

same as it was under 1531? [641] A. Yes, I believe so.

Q. And that's what I would call one-way busing. Just black out; is that correct? A. We have that kind of busing, of course, in other parts of the city, where we have to transport youngsters for other requirements, too.

Q. That doesn't have anything to do with 1533? A. Yes, it does, because that's a general provision that we will still utilize that policy, not just in that area but other areas of the city, too, I assume.

Q. You mentioned the cultural arts program, Dr. Gilberts. A. Yes.

Q. Now, as I understand it, would you tell the Court please how many days a week a student participates in the cultural arts program? A. I am sorry, I can't recall just exactly what the schedule is on that.

Q. Well, I hand you what has been marked as Defendants' Exhibit F. That is the description, is it not, of the cultural arts program? A. Yes.

Q. Does it say for how many days a week a student is to participate? A. Yes.

[642] Q. How many days a week is it? A. Two one-half days a week for one term.

Q. One term? A. One semester.

Q. And is transportation provided by the District? A. Yes.

Q. Where do they hold these cultural arts programs? A. We are presently holding them at two locations. The Gilpin Elementary School is one.

Q. That's up here in the core area, is it? A. It is on the west side slightly there.

Q. Right here? A. Yes.

Q. So it is north central in the core area. All right. One at Gilpin. Where is the other one? A. I am sorry,

it has slipped my mind. I can't recall. I don't see it on these.

Q. This program lasts for a semester, is that correct? A. Yes.

Q. And it involves only students in the sixth grade, that's also correct, is it not? A. Yes, so far.

Q. And it is on a voluntary basis? A. Yes.

[643] Q. And you have got a 99 percent participation in that program, is that right? A. Off the top of my head, estimate.

Q. Well, approximately? A. Approximately.

Q. And you think that is similar to what I was talking about in mixing grades under pairing? A. No, I said that it was a program that can contribute to the definition of the integration that Dr. Dodson used and I used.

Mr. Greiner: I have no further questions.

[643-A] *Redirect Examination by Mr. Jackson:*

Q. Dr. Gilberts, there was a question as to the racial composition at Smiley which was raised. I'd like to direct your attention once again to Plaintiffs' Exhibit 10, the bottom of Page 2—

The Court: I read that. I think the numbers are less than indicated. Is that what you're going to bring out?

Mr. Jackson: No, Your Honor. As I understood it there was some question as to whether it was 90 percent Negro or—

The Court: Seventy-five was the testimony. But it's seventy-one, I think, or sixty-eight.

Mr. Jackson: Sixty-seven; 27 percent Anglo and—

Well, so long as the Court understands, there is no need to—

The Court: I think I got that from the document here.

Mr. Jackson: Yes, I was referring specifically, Your Honor to Dr. Gilberts' testimony here.

The Court: All right.

Mr. Jackson: I have nothing further.

The Court: I get the feeling from what you have said that you're not convinced that integration is essential to quality education or alleviating any kind of a problem?

[644] The Witness: No, I have not said that, Your Honor.

The Court: You think there are substitute measures that are just as good.

The Witness: I think there are many ways of going about what I have defined and what Dr. Dodson defined as integration. I think, certainly, this matter of physical presence, as he indicated, and as I have talked about, too, can be an extremely important part of that, but I don't believe there is any particular form in which that kind of presence has to exist.

The Court: Now you're talking about community integration?

The Witness: No, I'm talking about school integration.

The Court: Well, I thought that you endorsed a program which would not call for any pupil integration except as it can be accomplished on some voluntary basis.

The Witness: No, sir. My program that I en-

dorsed involved, of course, the subject at hand here today, together with a number of other kinds of systems that I wanted to test to see whether or not we could accomplish those ends.

The Court: I had thought you approved, if necessary, a voluntary busing program even in connection with this regional matter as a part of it?

The Witness: Yes, sir, we did—

[645] Q. So you don't think then pupil integration is really an important and essential aspect?

The Witness: I'm not sure that it is absolutely an essential. At least, as one looks at it from the point of view of racial balance. I indicated in my earlier testimony that there is no evidence that integration per se has an effect, let's say, upon the achievements of youngsters. I believe that integration is important in the process of changing the attitudes and values of these kinds of things which are essential today in our society, but I do not believe that that particular change or that objection has to be accomplished, let's say, through racial balance, which has been substituted here extensively. I think there are other ways of doing it. I think other ways of modifying attitudes—there has always been this very heated debate across the entire country. In addition to that, I think some rather substantive changes are necessary in the change of process of education. Dr. Dodson referred to this as well. I don't agree with the factors he wrote out as cliches are unimportant in the process of education. They are important. I do tend to agree that we have used them as excuses

more than we should. And that we get into the whole area of modifying the processes of education there is some extremely important substantive changes that are necessary that relate both to the children and the community.

[646] And unfortunately we in education have a great deal to learn along these lines and I don't believe we can put all our eggs in one basket for solutions. We have got to try as many different approaches to this problem as we can and this is why we have such a range in this particular proposal of approaches to this.

The Court: Well, you do not predict that there will be anything in the nature of racial violence as a result of voluntary busing?

The Witness: No, sir, not in the definition that was given in the earlier parts of the trial, the approximation of percentages throughout all the schools—

The Court: I get the impression also that the community won't accept this voluntary busing unless it is in an atmosphere of a balanced school.

The Witness: I think, sir, that that is definitely a factor at the present time. I think there are a great number of attitudes that need to be changed and I think that the schools in their particular domain have a great deal of responsibility in formulating approaches that will begin helping modify those.

The Court: So this is an obstacle right at the outset, I suppose.

The Witness: Yes, sir, I think it is.

The Court: The white community won't send a [647] minority of white students into a Negro school, of which the population is—

The Witness: I think that's true. However, I wonder if, for example in this area of pairing schools in the north central with southwestern and southeastern schools, if we can get the involvement of parents and youngsters in the process of considering mutual problems; whether or not some of those attitudes can't be changed. I believe that they can be and I believe that we can develop some kinds of techniques that will reassure individuals both through the development of programs that make sense to parents as well as getting them more acquainted with some of the problems. And this is the question which can only be determined by a trial.

The Court: What is your program for accomplishing this?

The Witness: Well, as I indicated, I think there are many kinds of—the basic problem is one of communication, understanding of the difficulties. This is the basic problem, I think, between communities. We believe that there are ways that we can identify, or means that we can identify where we can get members of each of these communities together, to look at these problems, to discuss them, to learn to understand one another's viewpoints and, through this process, to begin to identify elements of programs which [648] could involve the interchange of pupils on many different bases. This really is the foundation it seems to me of that kind of approach. And it's an opportunity to begin approaching people on the basis of understanding problems through contacts.

Now, maybe this is an overambitious objective. I think not. If it can be done this way I think the

results in terms of the definition of integration that I have used and that Dr. Dodson used is probably going to be more successful than any other kinds.

The Court: It's too late to accomplish any substantial integration by changing school boundaries, I take it? Have you approached it in that manner?

The Witness: Yes, sir. It is very difficult because of the concentration of these youngsters both Hispano and black in those areas of the city and the overlapping of these areas. There are not enough adjacent areas into which these youngsters can be changed in order to accomplish what we would like to do. It has to go beyond that and has to involve a broader population base than those that are contiguous enough to do what you're discussing.

The Court: Now this is going to intensify, as time goes on, if the trend is not reversed?

The Witness: Yes, sir. It is likely to intensify. And the question is, how does one intervene in that process. [649] And so far as I'm aware, there has been no system which has been identified at this point that has intervened effectively. Now, there are those who feel they have identified things that could do this but I think they're all open to question. We feel that the things that we have identified and in the process of this plan and I'm sure there are other ways, too, will have as much of a chance of doing that as any approach. But, obviously, there are people who feel differently about it.

The Court: Do you have anything further?

Mr. Greiner: Yes, just a few more questions, Your Honor.

Robert Gilberts—Recalled—for Defendants—Recross

Recross-Examination by Mr. Greiner:

Q. Dr. Gilberts, you mentioned some of these pilot programs that are going on in the minority schools. A. I don't recall that I did.

Q. You said that there was special programs being conducted at certain schools. A. I was talking about cultural arts and cultural understanding.

Q. Well, there are compulsory educational programs, are there not? A. Yes.

Q. Would you identify for us, please, Plaintiffs' [650] Exhibit 35? A. This is a report to the Board of Education, Extension of Pilot Programs in Elementary and Secondary Schools.

Q. By whom was this prepared, Dr. Gilberts? A. It was prepared in 1963 and 1964, I assume, by the staff of the school system.

Q. What does it purport to discuss, do you know? A. Would you like me to go through it item by item and talk about them?

Q. No, I just want to identify it for the record. A. Well, it appears here that there are four major categories in curriculum and instruction, vocational-technical education; cultural and human relations education; in-service programs for personnel; and extension of pilot programs in schools.

Then they go on and list documents and talk about some of those programs in the elementary and secondary schools. I notice an item in here as being one of those items you're talking about.

Q. Dr. Gilberts, Exhibit 35 has been a report on progress and results in one of these pilot compensatory programs, is that correct? A. I'd have to read it to be sure. I'm not personally familiar with this document.

[651] Q. Take your time.

Mr. Jackson: If the Court please, I think that at this point I will interpose an objection. This is a matter that we did not discuss on direct examination. The exhibit itself talks in terms of a period of time prior to Dr. Gilberts' arrival in the city. He has indicated to counsel he is not familiar with the document and has not had an opportunity to read it, and I would object to any further questioning along this line at this time.

The Court: Do you think he should have an opportunity to read it first? We will give him that opportunity.

The Witness: Sir, there is a good deal of technical material in here in terms of the evaluation and so on which I don't believe I can read very quickly.

The Court: Okay. Well, then, we will sustain the objection for the time being. Maybe at a later time you would want to call him back. I don't think that he should be called upon to spend a lot of time—

Mr. Greiner: I think, Your Honor, we can approach it in a different way.

Q. Dr. Gilberts, you described to the Court some of the programs I believe that are contemplated or in the planning stage, the objective of which, as I understand it, was to overcome the low levels of achievement that exist in some of these predominantly minority schools, is that correct?

[652] A. Yes, in several different ways. I have talked about this general complex approach with some changes that are necessary there. I have not talked about specific plans.

Q. Well, I take it that there are so-called compensatory educational aspects that—are there not, of the Gilberts Plan. Exhibit D? A. There certainly will be as it develops. There are not as yet.

Q. Does 1533 provide for any particular compensatory educational programs, Dr. Gilberts? A. Well, in the context of the complex, I assume that there is an assumption that these kinds of plans will be developed by the Board, I'm sure, just as it has been by you.

Q. Now, as I understand 1533, these complexes—there is going to be no desegregation in the schools, is that right? A. I don't believe that you can make that assumption. The complexes have been designed in such a way as to get the best kind of composition within these complexes that we possibly could. And I assume that, within the development of these programs there will be elements that will provide for integration.

[653] Q. Well, is that going to require mandatory transportation, Dr. Gilberts? A. Until those programs are developed and designed, I don't believe I can answer that question.

Q. We just don't have the details yet, do we? A. That's right.

Q. Now, Dr. Gilberts, with regard to these compensatory educational programs, you keep referring to Dr. Dodson's definition of integration. Didn't he say that the first step is first you mix them up and then you start the integration process? A. That was his statement, yes, I believe.

Q. First, you have got to have the mixing of the bodies? A. That was his opinion, yes.

Q. Now, there is evidence, is there not, Dr. Gilberts, as far as the educational benefits that can be derived through

integration? A. Such as what benefits are you referring to?

Q. Well, I have reference to what I believe has been marked as Plaintiff's Exhibit 27, a report by the United States Commission on Civil Rights, published in 1967, "Racial Isolation in the Public Schools." A. Yes.

Q. Does this report treat the subject of [654] compensatory education programs versus integration?

Mr. Jackson: If the Court please, I am going to object to questions regarding this particular exhibit. My records do not show this exhibit as in evidence, and if it were tendered I would object to it.

The Court: He is not seeking to introduce it. He is cross-examining with respect to it, going to the credibility on the question of necessity for physical integration. I think it is proper. It may be that Dr. Gilberts will say that he is not familiar with the passage involved or that he hasn't read the report. If he does, that's the end of it.

A. I have read the report and I am generally familiar with what's in it, but I would have to look it over to talk about any specific points.

Q. Well, do you recall four programs that are described in the report, one at Syracuse, New York, one at Berkeley, California, one at Seattle, Washington, and one at Philadelphia, Pennsylvania? A. I am familiar with the Syracuse, the Berkeley—I am not absolutely certain about the Philadelphia or the Seattle one.

Q. Now, those programs generally did what, Dr. Gilberts? They had a segregated school to begin with, isn't that right? [655] A. Well, let's take them one by one.

Let's talk about Syracuse first. Syracuse began developing plans for attacking some of the problems of the core city back about six or seven years ago. Dr. Barry, with whom I am personally familiar, in Cincinnati, developed a plan of satellite complexes of elementary schools in order to begin replacing some of the older schools in the city. These complexes were on the periphery of the school system. This was a proposal.

I believe that the first one of those complexes is just now in the process of construction.

Q. I do not believe you are talking about what I have reference to, Dr. Gilberts. A. Well, refresh my memory.

Q. I am talking about the Madison area project. A. That was the transportation of black students from core area schools out to two or three—

Q. Anglo? A. —Anglo schools on the periphery of the city.

Q. What did they do? And then the segregated school from which those students came remained, did it not? They didn't close that? A. They didn't close that school, no. There were small numbers of youngsters involved, as I recall.

Q. They tested those youngsters left behind and [656] they tested the youngsters bused out into white schools, didn't they, Dr. Gilbert? A. Yes, they did.

Q. What did they find? Oh, pardon me, and the children that were left remaining in the black school, they were made the object of intensive compensatory educational programs, were they not? A. I am sorry, I just don't recall the actual details of that particular case, but if you say so I will accept that. I just don't remember.

* * * * *

Richard Koeppe—for Defendants—Direct

[658] RICHARD KOEPPE, called as a witness by the defendants, being first duly sworn, on his oath testified as follows:

The Court: Give your name and address for the record.

The Witness: My name is Richard Koeppe. I live at 8679 East Kenyon Avenue, Denver, Colorado.

The Court: How do you spell your last name?

The Witness: K-o-e-p-p-e.

The Court: You live where?

The Witness: 8679 East Kenyon Avenue.

The Court: All right.

Direct Examination by Mr. Craig:

Q. Please state your occupation, Dr. Koeppe. A. Currently the Assistant Superintendent in Charge of the Division of Education for the Denver Public Schools.

Mr. Craig: Your Honor, we have identified as exhibits Dr. Koeppe's background information and vital statistics, which counsel for the plaintiff has seen.

Mr. Greiner: It has been submitted, Your Honor, and we have no objection to it.

The Court: All right, have it marked and it will be received.

[659] Mr. Craig: Defendants' Exhibit U.

The Court: All right.

(Defendants' Exhibit U was received in evidence.)

Q. Dr. Koeppe, have you ever been a teacher in any

public school system? A. Yes, I taught in the Milwaukee Public Schools from 1956 to 1958.

Q. At what level? A. Junior high school, grades 7, 8 and 9.

Q. At any other level? A. I served as a counsellor on a part-time basis in senior high school, grades 10 through 12, for approximately 12 years.

Q. Would you briefly describe your responsibilities as Assistant Superintendent for the Division of Education. A. I am basically responsible for maintaining and enhancing the instructional program of the Denver Public Schools and in that capacity have within the division six departments, the Department of Elementary Education, the Department of Secondary Education, the Department of Adult and Vocational Education, and Department of Instructional Services, Department of Radio and Television, and Department of Pupil Services.

Q. Dr. Koeppe, were you in the courtroom at the time [660] Dr. Gilberts testified this morning? A. Yes, I was.

Q. Did you hear him allude to certain existing educational programs within the Denver Public Schools which provided and enhanced opportunity for interracial communication and understanding? A. Yes, he alluded to a number of them.

Q. Would you please describe the programs. A. Well, one that he alluded to was the early childhood education program primarily as it relates to a dimension in Planning for Quality Education and also as it relates to Complex Area Five. In one way, this is a new program starting this fall. In another way, it is not new. The preschool program has primarily been under the Head Start, which is OEO money under the Denver Opportunity.

There also were follow-through programs, some of which are a full-day program through OESA, Title I. This fall we are going to completely fund by DPS three childhood education centers. Basically at this time we will work on either half-day or full-day involvement with four-year-olds. There shall be an attempt to involve the parents of these youngsters. We are deliberately selecting children where parents both don't work or at least one parent is available to become involved in the program. We also under this arrangement will have the teachers in the centers under [661] objective administrative supervision of the honorary schools in the area, which means they will attend faculty meetings with the other teachers, which is not true under Head Start.

The Court: Will you keep your voice up?

A. (Continued) We will have the teachers under the Early Childhood Education Centers under the administration of the schools in the area, which means they will in turn attend faculty meetings and be considered part of that faculty. It will give our teachers or kindergarten teachers an opportunity to observe the early childhood education centers in operation.

Q. Do these programs offer any opportunity for interracial communication? A. Well, at this time we are starting on a small scale because we are really going to work out our curriculum and procedures especially with the parents and so forth. We are going to be working primarily, and I would say exclusively, with minority youngsters, but our intention is, based on our experience with the programs, to expand them possibly to the point where they would be of such a nature as to attract youngsters

from the Anglo and possibly Hispano areas of town, but not for the 1969-70 school year.

Q. Do you know if the Board of Education has placed [662] any special emphasis on these programs? A. Well, it was the—as I mentioned, it was in the report, "Planning Quality Education," and I believe it is also in one of the recent resolutions passed by the Board.

The Court: The Head Start programs are filled to capacity with minority youngsters, aren't they?

The Witness: Yes, they are.

The Court: So, there are no openings for even other minorities?

The Witness: This is right. This is really an expansion of that.

Q. Dr. Koeppe, I hand you Plaintiffs' Exhibit 6, which is admitted in evidence, and direct your attention to Resolution 1533 contained therein, and ask you whether you can identify in that resolution any special emphasis on these programs. A. Yes, Item 3 of the resolution states that the Superintendent is directed to take steps to establish preliminary educational programs in the schools in the north central portion of the district in September 1969, as proposed in the said report, "Planning Quality Education."

[653] Q. Dr. Koeppe, we won't go over the same ground that Dr. Gilberts has covered, except where we might add something.

Mr. Craig: Dr. Gilberts has identified Defendants' Exhibit F, a brochure on the cultural arts program, and we would offer that in evidence at this time.

Mr. Greiner: No objection, Your Honor.

The Court: F is received.

(Whereupon, Defendants' Exhibit F was received in evidence.)

Q. Can you add anything to Dr. Gilberts' description of that program? A. I think a point of correction—the office for the cultural arts program is located at Gilpin School. The actual arts programs are located at Fairview School. We have four teachers at Fairview School and four teachers at Ebert.

Due to the additional program planning that is going on for Fairview School, we in all likelihood will have to move that center to another school for this fall. The staff is currently looking at that. So we will have the office—the office will stay at Gilpin. One of the centers will stay at Ebert and one at Fairview will have to be moved to another elementary school.

I might mention in terms of expansion, we do have hopes for expansion of this program even without additional facilities. For example, since its inception the staff [664] taught youngsters for four days a week. And the fifth day was used to work with the consultants and the artists that were brought in to do planning and so forth and the staff now feels they have been at this sufficiently long that they can actually run the program five days rather than four, and whether we can begin this September or not, we don't know, but somewhere in the near future we will be running it five days a week rather than four.

Also, we do have in the 1970 budget four additional teachers for the cultural arts program. This is based strictly on the assumption that we're going to find additional facilities somewhere in the district, but I'm hopeful that when a bond proposal is put together for submission to the Board, one of the components included therein will

be a true, full-blown cultural arts program which will be a separate facility specifically for this program and that at that time we can involve, of course, many more youngsters than we do at the present time.

Q. What youngsters are eligible to participate A. I think the superintendent mentioned this program is in the—is in operation at Grade 6.

There is another correction I would like to make. I believe the 98 percent that he referred to was—the program is optional. It's offered to parents in selected schools and approximatly 98 percent of those who have the opportunity [665] sign up for it. I think the percentage of youngsters actually involved in the program is considerably less. I think, because of our limited facilities and so on we fully only involve something like 60 or 70 percent of the current sixth-graders. But it's basically at the sixth-grade level. The groups that are brought together—he was correct—we brought together two half days a week, I think it's for a quarter, however, and not a semester. I think they rotate four different groups through the centers. And each group is composed of one-third Negro, one-third Hispano, and one-third Anglo youngsters. The media of art, drama and music is used in the presentations and also some of the artists in the community are brought in as instructors.

Q. I believe Dr. Gilberts mentioned a program of teaching about minorities. Can you expand on that a little bit? A. Well, Denver, like most urban centers a number of years ago received requests from minority populations that they be included more accurately in the teaching of the history of this country. And Denver, like most urban areas, adopted two basic strategies in trying to reply to this request: one was to develop specialized elective courses that dealt with the history of the minorities; for example, the history of the Afro-American or the Negro, for example,

in this country. This program, to my knowledge, was developed [666] during last summer and, I think, started for the first time the second semester of this year, in the summer high schools and exactly how many it will be next fall and where, I don't know.

The other basic strategy that we followed like other urban centers was to give increased prominence or give some prominence is probably more accurate, but hopefully significant appropriate prominence to the contributions in minorities within the required courses as—such as American History, Grade 8, and U.S. History at Grade 9. Of course, the development of materials has been a slow process and we're moving ahead on this, and along with this we have carried out in-service work with teachers either our own or in concert with local universities and colleges.

Q. Dr. Koeppe, are you acquainted with the Hallett Elementary School voluntary exchange program? A. Yes, somewhat.

Q. What is the purpose of that program? A. Well, the purpose of the program, I think, is somewhat indicated in the title that is used in the resolution to make Hallett a demonstration integrated school and the purpose is, of course, to integrate Hallett, and in the process integrate a number of other elementary schools in the district.

Q. Are you acquainted with the administrative goals [667] set up for the beginning of school year in September, 1969? A. Yes, in a general sort of way. My recollection of this is that when the goal was first proposed to the Board of Education for their consideration the number 500 was used and I think it was used in terms of an ultimate goal that would have to be arrived at to make Hallett an integrated school. The number, goalwise, was never included in either Resolution 1531 or 1533, and the use of the term

"administrative goal" is a correct one. The major responsibility for carrying out the integration of Hallett Elementary School resides with the office of School Community Relations, and right at the very outset it was Mr. Cruter's feeling that in terms of this fall, 300 might be a more appropriate number. And now that we have gotten into it a bit we feel that perhaps 250 or maybe 200 is more realistic for this fall, but we're working on it throughout next year and, based upon our experience this year, we hope to have the 500 in by the fall of 1970. That's my understanding of the goals.

Q. Are you advised as to the progress in obtaining volunteers for that program? A. Yes. I consulted with Mr. Cruter—members of his staff and my staff—that we know where we stand numberwise because there are implications for possible staff shifts.

Q. I hand you what's been marked as Defendants' Exhibit G for identification. [668] A. This is an interdepartmental memorandum dated July 18th from Mrs. Archuletta, who is the supervisor in the office of School Community Relations, to me, which gives me a status report of the number of volunteers into Hallett and out of Hallett as of July 18th.

Q. Would you read the total from that exhibit of the volunteers?

Mr. Greiner: Pardon me, Your Honor. I don't believe the exhibit has been offered.

Mr. Craig: We will offer it now.

Mr. Greiner: May I see it?

Mr. Craig: I think I provided you with a copy.

Mr. Greiner: I have no objection.

The Court: Exhibit G is received.

(Whereupon, Defendants' Exhibit G was received in evidence.)

The Witness: Your question again, Mr. Craig?

Q. Would you read the total to Hallett? A. 163.

Q. And the total from Hallett? A. 104.

Q. Would you consider that an encouraging report in view of your goals? A. I would to the extent that in terms of the recruiting in the Hallett area, this was just really begun, to my knowledge, [669] on Monday, I think, two weeks ago. And we—I think the intention of the office of School Community Relations is to run about a five or six-week block-to-block, door-to-door campaign, and Mrs. Lewis, who has been very instrumental in getting a number of volunteers out of the Smith Elementary School, has been employed, again, as of two weeks ago, to head up this project, and it is her estimate that we can reach the 200 to 250 mark by August sometime.

Q. Now, Dr. Koeppe, when will the persons who have applied for this program be notified whether or not their requests will be accepted? A. As I recall, the persons who were on voluntary open enrollment last fall, those who have requested a continuation, are to be notified on or about August 1st and those who are new requests will be notified on or about August 11.

Q. Are these notifications prepared by persons under your supervision? A. Yes, they are prepared by the office of Attendance of Pupil Records, which is part of the Pupil Services Department.

Q. Dr. Koeppe, I hand you what's been marked as Defendants' Exhibit H and ask you if you can identify it? A. Yes. This is a request for a continuation of Sara Wenger at Hallett, Grade 3. She was at Hallett, Grade 2, last year.

And the second attachment is an approval to [670] continue on voluntary open enrollment to improve integration, a standard form, again dated August 1st, and this is ready for mailing.

Q. It has not yet been mailed? A. No, it has not.

Mr. Craig: We offer Defendants' Exhibit H.
Mr. Greiner: No objection, Your Honor.
The Court: H is received.

(Whereupon, Defendants' Exhibit H was received in evidence.)

By Mr. Craig:

Q. Dr. Koeppe, are you also acquainted with the so-called voluntary open enrollment program other than the Hallett program? A. Yes. It's the application of that to the Hallett situation, actually.

Q. How does that plan operate? A. Well, it basically allows individuals who are interested in transferring from one school to another to do so provided certain conditions are met; one, that there is room in the school to which the youngster desires to go, and, secondly, his presence will both improve the racial balance of the sending and receiving schools, and if these conditions are met, the request is granted and transportation is provided.

Q. When did this program first go into effect? [671] A. The Board adopted this at its November meeting this year and the first time it really went operational was the second semester of 1968-1969.

Q. Do you know how many pupils took advantage of this program in the second semester of 1969? A. As I recall, approximately 850 students were transferred at the semester under this policy.

Richard Koeppe—for Defendants—Direct

Q. Dr. Koeppe, I hand you Defendants' Exhibit I and ask you if you can identify that? A. Yes. This is an interdepartmental communication from myself to Mr. McWilliams, who is director of the office of Attendance and Pupil Records, also dated July 18th, and it gives me a status report on voluntary open enrollment—really, two aspects of it: one, the number of continuing requests and the number of new requests, and the total of July 18th, and also a report on the number of spaces that appear available for this fall for this program.

Mr. Craig: We would offer Defendants' Exhibit I.

Mr. Greiner: No objection, Your Honor.

The Court: It's received.

(Whereupon, Defendants' Exhibit I was received in evidence.)

The Court: Are you going to have him testify from it?

Mr. Craig: Yes, Your Honor.

[672] The Court: What's he going to say about it?

Mr. Craig: He's going to testify as to what it says in terms of numbers of spaces open for open enrollment.

The Court: Okay. Proceed.

Q. Calling your attention to the spaces provided for open enrollment in the senior high schools, how many available spaces are there in the senior high schools? A. There are 505 available.

Q. How many are available in the junior high schools? A. 725.

Q. And, according to this exhibit, how many are available in elementary schools? A. Actually there are two parts to that report: one is dated in Mr. McWilliams' handwriting, May, 1969, which shows 1,081, and in the cover to the attachments he indicated that the available—the total spaces available at the elementary level are approximately 1,300.

Q. And does that exhibit give the total number of voluntary open enrollment applications received as of the date of the exhibit? A. Yes, it does. It indicates that, as of this date there are 836 new applications.

Q. Does it also include those continuing voluntary open enrollment? A. Yes, 541.

[673] Q. Has the administration actively solicited volunteers for this program? A. No. The only exception is the Hallett program and we have not, pending the decision in this hearing.

Q. Dr. Koeppe, I hand you—

The Court: May I see that, please?

Q. —Defendants' Exhibit J and ask you if you can identify that? A. Yes. This is a copy of a form letter which will go out to students who would have been affected by 1520, encouraging them to consider taking advantage of the voluntary open enrollment plan.

Q. Doesn't this letter also apply to those who were involved in Resolutions 1524 and 1531? A. Yes, there are actually quite a few variations of this letter because it had to be modified depending upon what school area he was going to.

[674] Q. Now, were these letters prepared by persons under your supervision? A. Yes, signed by David R.

McWilliams. Again, it was under his direction and supervision.

Mr. Craig: We offer Defendant's Exhibit I.

(Whereupon, Defendants' Exhibit I was received in evidence.)

Q. Now, Dr. Koeppe, are these letters ready to be mailed whenever you are permitted to do so? A. Yes, to my knowledge there are approximately 4,000 of these ready to be mailed.

Q. Now directing your attention to Defendants' Exhibit I again, I will hand you a copy. Can you tell us how many of those spaces in the senior high schools are open for or would improve integration if a Negro were to transfer. A. Well, the senior high schools listed, you would have to subtract the spaces at East and at Manual High School, that's 50 and 75, is 125—approximately 475 or 480 spaces would be available for Negro transfers.

Q. And the same question as to junior high schools. A. At the junior high school level I believe all 725 would be available spaces to Negro pupils.

Q. How many spaces would be available at the elementary school level? [675] A. Of the 1300, approximately 900 would be available.

Q. So, have you kept a total on the total number of spaces at all levels? A. 900 and 725, 16, 25 and—about 2,000 spaces.

Q. Then, would you have to subtract the number of spaces for which you already have voluntary open enrollment applications? A. Yes, you would only have to subtract the new voluntary open enrollment inasmuch as the continuing in most cases are already counted as staying at

that school, so you would have to subtract 836 from 2,000, and that would give you the spaces still available as of today, or as of Friday.

Q. So, assuming all these spaces were filled by voluntary transfers from Negro and other minority pupils, would this free up a similar number of spaces for transfers by Anglos— A. Well, that—not completely, because as I think has been mentioned on previous occasions, the schools from which the Negro youngsters would be coming are ones in which we are intending to either maintain a lower enrollment or actually reduce it further, so if we were to get 2,000 Negro youngsters out of these schools it wouldn't in turn open 2,000. It would be 1,000 or 1200, I don't know what [676] the number would be but it wouldn't be a one-for-one exchange.

Q. But, assuming all these spaces were filled by transferring Anglo pupils, would that free up a similar number for additional minority pupils? A. Right, you would get a snowballing effect, because you would again have spaces elsewhere. This is one reason for the late date of notifying parents of the acceptance of the request because if we made the decision in June we might have to say no. On the other hand, if we have a child coming out of that school we could say yes, so we have to wait until all the data is in and take a look at it. But, yes, we free the space and the numbers would continue to snowball.

Q. Carrying this on to a theoretical conclusion, would this process repeat itself until there would no longer be any pupils in the Denver School System eligible for transfer? A. In theory, yes.

Q. And what would you call this plane? A. Oh, racial balance, I suppose, in the schools. Integration. Racial balance.

Q. Dr. Koeppe, I call your attention to Plaintiffs' Exhibit 6, the minutes of the meeting of the Board of Education of June 9, 1969, and ask you to read the part [677] starting with "B" on page 10. A. On voluntary open enrollment, it says, "It was moved by Mr. Southworth that in addition to the existing voluntary open enrollment policies with transportation provided that—" Is that the place?

Q. Yes. A. "which includes all schools in the district, superintendent and staff be directed to develop and initiate concentrated and effective plans and programs designed to achieve the voluntary exchange of pupils now residing in the Smiley Junior High School and East High School attendance areas with pupils now residing in the attendance areas of South, Thomas Jefferson, and George Washington High Schools, provided that such exchanges in school assignment result in improved understanding and integration both in the sending school and in the receiving school, that such plans and programs be made effective as soon as feasible and by the opening of school in September of 1969, if possible, and if not by the commencement of the second semester of 1969-70 school year, and all such exchange programs shall be with transportation provided by the District."

The motion was—then it has a roll call.

Q. Passed? A. Was seconded by Mr. Perrill and then there was a roll call.

[678] Q. Do you know the purpose of this motion? A. The purpose, of course, I think is also stated in the motion itself, and I think it is an attempt to do voluntarily what 1520 and 24 had done, to stabilize the schools at East and at Smiley and to bring about integration and understanding.

Q. Now, Dr. Koeppe, have you received any information as to the implementation of this motion? A. Yes, one communication from the superintendent.

Q. I hand you what has been marked as Defendants' Exhibit K and ask you if you can identify it. A. All right, this is the memorandum from the superintendent to a number of persons in the central office and it is dated June 12, and the subject is staff meetings on Tuesday, June 10, regarding modification of plans as a result of Board of Education meeting on June 9, and it deals with a number of things.

Mr. Craig: We offer Defendants' Exhibit K.
Mr. Greiner: No objection, Your Honor.
The Court: Exhibit K is received.

(Whereupon, Exhibit K was received in evidence.)

Q. Dr. Koeppe, would you read paragraph 4 on page 2 of that exhibit? A. "Regarding the resolution which calls upon us to [679] devise special intensive programs for the voluntary transfer of pupils in the East and Smiley areas together with South, George Washington and Thomas Jefferson junior and senior high school areas, we will spend the summer in laying out a plan which will involve such organizations as the student council and P-T.A. that have volunteered to help. Our objective will be to have this plan completely laid out so that in the fall of this year we can involve the principals, teachers and other people in this program during the first semester with our target being the implementation of it the second semester. This in no way implies that we will not encourage or consider voluntary enrollment by pupils in these schools un-

der the existing open enrollment with transportation provided policy. It is felt to be quite important that this program be well designed and well planned so that we are successful in its implementation. It was thought that too great a risk would be run in trying to implement this program in the first semester, that failure in our efforts here might have serious effects on our future ability to promote these programs. It was indicated we ought to have this program sufficiently completed by November 1st so that we know how many people will be participating."

Q. Dr. Koeppe, are you now working on the implementation of the planning directed in that communication? A. We haven't specifically started on this, but we [680] intend to early next month. Mr. Liddell Thomas, who is currently principal at South High School, as of August 1st will become the Assistant Executive Director of Secondary Education, and he has already been notified that one of his first priorities upon assuming this position will be to follow up on this directive from the superintendent.

We have also alerted other staff members such as Mr. Room, who work with our student councils and others, that we will be doing this during the month of August, so that we are ready to put it in operation during September and October to do our intensive recruiting.

Q. Dr. Koeppe, do you have any opinion as to the possibility of success of such a plan? A. Well it is really very difficult to say. Out of the 850 that volunteered for the second semester this past year, I think something like 250 or 300 were at the secondary level. I don't think we got really very much requests at the junior and senior high school level for this fall simply because 1520 has sort of precluded that. These schools were not eligible then for voluntary open enrollment. We have some indication

that among the student bodies some of the most concerned and interested in bringing about integration are the senior high school students and they all seem to have a bit more influence over their parents than certainly elementary children. I think with a [681] properly executed program with involvement of the students themselves it could be successful, but I just really don't know. We have to wait and see.

Q. Dr. Koeppe, Dr. Gilberts has already mentioned the Balarat proposal, the Balarat Outdoor Education Center, and I hand you what has been marked as Plaintiffs' Exhibit L and ask you if you can identify it. A. Yes, this is a—as stated, "a Proposal to the Board of Education, the Balarat Site, Development of an Outdoor Education Center for the Denver Public Schools," and prepared in this form for September 1968.

Mr. Craig: We will offer Exhibit L.

Mr. Greiner: May I ask just one or two questions?

The Court: That's Exhibit M?

Mr. Greiner: This is L, Your Honor.

Voir Dire Examination by Mr. Greiner:

Q. Dr. Koeppe, the Balarat Site, when is that to be put in effect? A. Of course, in stages. We actually have a group of 30 youngsters on site there this summer, living in tents, preparing trails, preparing campsites and so forth. We have budgeted for 125 day trips to this site and back during 1969-70 and we are in the process now of working with the [682] Division of Planning and Engineering to decide exactly where permanent facilities will be constructed as Balarat, but I assume it will be several years

before it becomes fully operational, but we are really just beginning the planning stage.

Mr. Greiner: Well, Your Honor, I object on the basis of relevancy. I don't see how the presence of what is being described in Defendants' Exhibit L is going to have any effect on the fact of the rescission of these resolutions and the immediate impact in September of '69, so we would object.

The Court: May I see it, please?

Mr. Craig: Your Honor, the purpose of offering this exhibit is the same as the other programs that we have mentioned, that one of the purposes of this program is to offer opportunities for interracial communication, and I just wanted to bring that point out.

The Court: The exhibit will be received.

(Defendants' Exhibit L was received in evidence.)

The Court: Do you wish to see it? Do you need it?

Mr. Craig: No, Your Honor. I believe Dr. Koeppe has a copy.

[683] *Direct Examination by Mr. Craig* (Continued):

Q. Dr. Koeppe, directing your attention to page 4, would you just list by heading the various purposes of this outdoor educational center? A. Educational, scientific, cultural and socio-economic, recreational.

Q. Then, would you come back to page 5 and read paragraph 1 under "Cultural and Socioeconomic." A. "To provide a site in which pupils from throughout the metropoli-

tan area can congregate away from the atmosphere in which prejudice breeds, one in which children of all races and economic backgrounds can meet in an atmosphere conducive to the development of understanding and respect for each other."

Q. Has this program been given any top priority in terms of implementation? A. Yes, it is definitely a very high priority item, but as I said, our basic characterization of what we are going to be doing at Balarat during 1969-70 is planning, with some programs going operational. I mentioned the group up there this summer, plus the 125 trips being planned during the year, and that's what we will be doing during '69-'70.

Mr. Craig: I have no further questions of [684] Dr. Koeppe at this time.

* * * * *

[685] * * *

Cross-Examination by Mr. Barnes:

Q. Dr. Koeppe, I believe you testified to the early childhood education centers which are maintained an operated by the Denver Public Schools. A. That will be.

Q. That will be? A. Right.

Q. Have any of these programs gone into effect as of this time? A. Not those that are fully funded by DPS, no.

Q. How many children do you expect will be involved when they do go into effect? A. I would guess in the neighborhood of 75 to a hundred.

Q. When do you first expect those programs to go into effect? A. September of this year.

Q. And as of this date you have no results from any such program undertaken in the past? A. Not that I'm aware of.

Q. Turning your attention to the cultural arts [686] program which you described, do you recall from what recommendation that proposal arose? A. I believe a program similar to what finally became the cultural arts was suggested in an advisory committee report to the Board.

Q. That would be the report of the advisory council on the equality of equal educational opportunities in Denver Public Schools? A. I believe so.

Q. Plaintiffs' Exhibit 21? A. (Nods affirmatively.)

Q. Directing your attention to page 53, to the last paragraph, does it state there what the objectives of the cultural arts program are? A. Yes, it does.

Q. And the concept of that committee.

Would you read the first sentence. A. It says, "The objective would be to develop in each child the fullest potential for creativity and appreciation while striving to stimulate general enthusiasm for education in those who are not now being fully motivated or receptive to the present standard curriculum being offered by the Denver Public Schools. Moreover, it was hoped there would be enhancement of broader understanding, a greater degree of cultural integration, and participation in meaningful activities involving intergroup [687] relationships among pupils. . ."

Do you want me to go on?

Q. No, you can stop there.

The Court: What's he referring to? Exhibit 21?

Mr. Barnes: Yes, this was Exhibit 21.

Q. The cultural arts program which you describe is at least in part in response to the recommendation that is contained in this Exhibit 21? A. Apparently.

Q. What are the offerings of the cultural arts program? A. As I understand it, they present instructions through four basic media: the art, drama, music and dance. These are either presented at the centers at Fairview and Ebert or youngsters are taken to various places in the community to take part in these programs.

Q. I show you Defendants' Exhibit F and ask you to look at the paragraph there which is entitled, "What do we do?"

Do you see that paragraph? A. Yes, I do.

Q. Does that list among other things that the contents of the cultural arts program will be to watch a play? [688] A. Yes.

Q. Dance with Russian scarves? A. Right.

Q. Joust with poles? A. (Nods affirmatively)

Q. Now, is that program—do you think that's going to be effective in establishing motivation with regard to the standard curriculum pursuant to the advisory council recommendation? A. It might actually be too early to determine that. I don't think the cultural arts program—It went into effect in 1967 and one of our problems with the program due to limited facilities has been relating the experience in the cultural arts center to the regular curriculum. One of the real problems has been that the regular teachers have not been really aware of what the cultural arts program has done and they really haven't been able to participate in it.

Our intention is, once we get a cultural arts center, the regular classroom teacher will actually attend the center with the youngsters and observe what they are doing so

that there can be a greater relationship between the two. This is one problem we have right now.

[689] Q. Is there any serious thought that the courses and the offerings that are described there will result in higher achievement test scores in the predominantly black schools? A. I think the word that was used in the advisory council spoke of motivation and I think went beyond motivation to assume that this in turn might then bring about better achievement, yes.

Q. Turning your attention to the Hallett Elementary School project which you described, as I understand it their project was to be entirely voluntary, is that correct? A. Yes, it is.

Q. And as originally initiated it was to include a total of a thousand students, 500 in and 500 out? A. Right.

Q. You testified that estimate is now down to a hoped-for 100 or 200. A. Well, you would have to double that, too.

Q. Right, 400. A. Right, possibly 500.

Q. Is there any relationship between the drop in your expectation of the participation in this program and the effect of the rescission of the integration resolutions? [690] A. First of all, let me state that I never made the expectation of 500. That number was put into the proposal when it went to the Board of Education. To my knowledge that was put in there by the division of planning and engineering as an estimate of what it would take to racially balance the school. Our division was not consulted as to that number nor was the office of school and community relations, and I think for that reason no number was put in either resolution. And I think the first expectation that either that office or our division had of what

we could accomplish by this fall, we would not have said 500 ourselves.

Q. But that was a recommendation of the superintendent at that time? A. Yes, it was, and the second part of your question? I am sorry, I have forgotten.

Q. The second part was whether you saw any relationship between the drop in your estimate of the participation in that program and the effect of the rescission of the resolutions. A. I don't think so. I think Mr. Cruter and members of our staff would have felt if we could have accomplished 250 to 300 given the time we have and the time of the year, the fact that the school was not going to be in session during July and August, I still think we would have set [691] that goal.

Q. As I understand it, all white parents who participate, who volunteer, are notified their children will be sent to Hallett. A. No, no one has been notified, no, because in order to make this plan operational it is contingent on getting a like number out of Hallett to vacate the seats.

Q. The school to which the children will be sent is identified? A. Yes.

Q. Is the same identification given to the black parent who is going to send his child out for the other part of the Hallett program? A. Not to the same extent. We are, as I recall, trying to recruit through approximately 30 elementary schools in southwest, south central and southeast Denver, and in turn we are trying to vacate significant numbers of spaces in approximately 8 of these schools, so we are trying to pick what Mr. Cruter has called focal schools so that we can tell the parents at Hallett that it is very likely that they could have the option of going into one of these eight schools rather than have them consider 30.

Q. But at the present time they are being told it may be one of somewhere between eight and thirty schools? A. I think our strategy is to talk at this time [692] about the eight and not thirty, and we are quite hopeful to concentrate on the eight because we know this is what is of concern to the Negro parent sending out his child.

Q. It affects the way it works? A. Yes.

Q. Part of the program depends upon the ability of parents to conceive the school their child will be going to attend? A. That is correct.

Q. One of the difficulties at the present time is that the black parent cannot actually see the school his child might attend? A. That is correct.

Q. Have you received requests from white parents that a single white school, predominantly Anglo school, be identified as a target school to which Hallett children could go? A. Yes, I can't recall whether we have gotten it from Anglo or Negro, but I know we have gotten them.

Q. One of these suggestions was, was it not, that white children presently being transported to University Park be diverted to other southeast Denver schools, that University Park be made a target school for Hallett children? A. You say that was suggested?

[693] Q. Yes. A. Yes, I believe it was.

Q. According to Plaintiffs' Exhibit 89, which I believe is in evidence, there are 482 spaces in Montclair Annex, Pitts, Cory, Ellis, Denison, Traylor, Asbury, Slavens, Carson and Goldrick, is that correct? A. I am not familiar with the document.

(Counsel handed document to witness.)

Of course, now, this is data as of 1968, and the data I reported on this morning was data as of the present.

Q. Is there some way in which that data should be modified? A. Which data?

Q. This data. A. Well, I think the memorandum that I got from Mr. McWilliams indeed supersedes this one. That's the data which we have to work with now.

Q. How many spaces do your data say you have got in southeast Denver schools? A. The memorandum that I have from Mr. McWilliams gave only totals, and it I think listed the schools but did not break down spaces by schools.

Q. That would be Defendants' Exhibit I? A. Yes.

[694] Q. Taking that exhibit, then, Mr. Koeppe, that exhibit states, does it not, the figures for spaces available under voluntary open enrollment? A. Right.

Q. In various high school areas? A. Right.

Q. Does that exhibit show that there are 34 elementary spaces in George Washington High School area? A. No, it doesn't. It really has two parts to it. Are you referring to this 35?

Q. Yes. A. Of course, the totals for this particular document total to the 1,081, and Mr. McWilliams indicates that in redoing this we have actually got 1,300 and he doesn't—and these are the schools in which the 1,300 exist, but he doesn't have any numbers attached to them, so I don't know for a fact how many exist.

Q. But there is a breakdown by schools, is there not? A. As of May, and I assume there is now, but it is not itemized here.

Q. As of May, how many spaces were there available in George Washington High School area? A. 34.

Q. How many were there in the South High School [695] area? A. 73.

Q. And how many in the Thomas Jefferson School area? A. 103.

Q. By quick arithmetic I get about 210 total for those spaces. Does that seem about right? A. Right.

Q. So that by the School District's own figures, there were at least 210 spaces available in southeast Denver schools in the elementary schools, were there not? A. In early May, yes.

Q. Right. Now, according to Defendants' Exhibit R, there were or there are 501 students being bused into University Park, is that correct? A. Yes.

Q. And 210 of those students could have been reassigned to spaces which you show are available under voluntary open enrollment, could they not? A. That's possible.

Q. So the parents have suggested to you that these spaces be made in a single target school made a fairly reasonable suggestion, did they not? A. Well, a couple of things have to be taken into account. One is the fact that spaces, the data that Mr. [696] McWilliams had, is broken down by grade and the totals on Exhibit R are exactly that, so that we might have youngsters who would come through University Park in theory to the South High area, yet, for example, if there are many that are third graders we have only four spaces for third graders and seven spaces for sixth graders, so it would have to be broken up in detail.

Another problem is simply the matter of transportation out, transportation out of the geographic areas. We might do this in one or two buses going from a given school to a given area, but if we transport from a given area to a larger number of schools it compounds the setting up of the transportation; but the total number of spaces you alluded to is accurate, but by grade level it may not be.

Q. Do I understand correctly that prior to January 1968 children were transported all the way from south-

west Denver in the Traylor School all the way across to University Park? A. Yes, I understand you.

Q. So that the distance involved in transportation would be hard to extend would it not? A. Right.

[697] Q. And we're talking about spaces available now in Southeast Denver to which children from the Southeast Denver annexed areas might be diverted, are we not? A. (Nods affirmatively.)

Q. So the transportation is not really the crux of that redistribution problem, is it? A. I really am not competent to comment on that. That's in Mr. Olander's area and I don't know what complication this would have caused.

Q. Based on your reflections just now on the requests of these parents to have these children rediverted and create this target school at University Park where Hallett parents could send their children, do you have any more detailed explanation of why those parents were turned down? A. No, I don't.

Q. As I understand it, the Hallett Elementary School is the only school area—the only area where the intensive recruiting is being done for participation in the voluntary program? A. That's correct.

Q. It's not being done in any other elementary school? A. Oh, it's being done in elementary schools of South, Central and Southeastern. You're talking about predominantly black elementary?

Q. Yes, but those are children who are being recruited [698] to go to Hallett? A. Right.

Q. It's not being done with regard to any other target school like Hallett? A. That's correct.

Q. Is it being done in any junior high school? A. Not at this time.

Q. Any senior high school? A. Not at this time.

Q. So that intensive recruiting effort which was described earlier is an effort confined to a single elementary school, is that correct? A. That's correct.

Q. Turning your attention to voluntary open enrollment programs in general, Dr. Koeppe, I believe that the Defendants' Exhibit I shows that there were 1,081 spaces in the senior high school areas when that exhibit was prepared? A. That 1,081 is the elementary spaces.

Q. Elementary spaces. You're right.

And, as I understand it, that cover letter now says that there are something like 1,300 such spaces? A. That's correct.

Q. How many children, Dr. Koeppe, are located in the mobile units at Smith Stedman and Phillips? Do you recall how many mobile units there are? [699] A. No.

Q. Would 22 sound about right? A. Recalling from yesterday's testimony, yes, I guess it would.

Q. There would be about 30 children in each mobil unit? A. Probably not that high. Probably more like 25.

Q. Or something less than 660 children in those mobile units, then, is that correct? A. That's close, I'm sure.

Q. And you have got something like 1,300 voluntary open enrollment spaces by your own figures in Southeast Denver? A. Some of these, of course, have been requested—we have requests at this time for 397 of those under the new voluntary open enrollment.

Q. Why don't you transfer the children who are in the mobile units and confined in this area of town to those spaces, Dr. Koeppe? A. To do this would—I really don't know. I hadn't thought of that strategy, first of all, and it would preclude, of course, any use of voluntary open enrollment. It would literally take the space. It could knock out Hallett's plan.

Q. Do you regard the mobile units in Northeast Denver as permanent? A. I personally don't, no.

Q. You have been made aware, have you not, by parents [700] in that area of their desire to have the mobile units closed? A. Some parents, yes.

Q. And it is the policy, is it not, of the Board to transport children for the purposes of relieving overcrowding? That's stated in 1533, is it not? A. Right, it is.

Q. Now, turning to the effects of voluntary open enrollment on the problems in Northeast Denver, one of the problems to which the integration resolutions addressed themselves is the problem of stabilization of schools in that area, isn't that correct? A. That's correct.

Q. Isn't it true that the voluntary open enrollment program has a random effect? A. In that it is voluntary.

Q. Right. A. Yes.

Q. In that each of the parents makes his own decision about to which school his child will be sent? A. That's true to an extent. It depends upon the recruiting procedure that is used. For example, if we intensively recruit door-to-door we might limit that to a given geographical area of a subdistrict which is in terms to our advantage in picking up children for busing.

Q. Now, on the policy it is stated children can be [701] moved to any school where it will improve the racial balance, isn't that correct? A. That's correct.

Q. So a parent may decide to go to Traylor, as well as Phillips, might he not? A. That's right.

Q. So as a result of the random choices of all the parents involved, there may be no concentrated effect in Northeast Denver, isn't that correct? A. That could happen.

Q. What does that do to your expectation to Northeast Denver to be stabilized? A. I don't see—

Q. Well, under the resolutions there was an attempt to stabilize the concentration in the Northeast Denver area. Will this have any predictable effect on that? A. You're talking about getting youngsters out of Northeast Denver; not getting youngsters into Northeast Denver.

Q. That effect is random, too, is it not? A. Right, but both have to occur for stabilization to take place.

Q. Right. Now, as I understand it, the voluntary open enrollment program has been made known to students through letters to the parents issued by principals, is that right? A. That was true at the beginning of the second [702] of that last year, yes.

Q. And program counselors have told the students about it? A. It's possible. I don't know that they have been.

Q. Have you not made any effort to counsel the students on the advantages or disadvantages of voluntary open enrollment? A. We haven't at the secondary level as I mentioned in my testimony this morning because of the existence of 1520. I also testified this morning that we have every intention of doing that exact thing during September and October in the secondary schools of Northeast Denver and teachers and so forth.

Q. Voluntary open enrollment was in effect, wasn't it, in the spring of this year? A. It was.

Q. And it was enacted last November? A. That's right.

Q. So there was plenty of opportunity to tell the counselors that the program was in effect and that children could take advantage of it. A. Right, but 1520 was passed in January, which made that effort unnecessary.

Q. As to those schools? A. That's right.

[703] Q. Did it make it unnecessary as to the rest of the school district, Dr. Koeppe? A. No.

Q. Well, has any thought been given to the problem of gearing up voluntary open enrollment programs each year? A. Well, I think there is—in essence, we're going to have to take a step at a time in our efforts and our efforts at this time are geared for doing what we can at Hallett this fall and doing what we can at the secondary schools for the second semester of 1969-70 and learning from these experiences.

Q. Would you not have to do the same each year—the same thing each year in order to get full participation? A. It's possible but, of course, it's our hope that as we get persons involved in these types of programs, if they prove to be beneficial and successful, that these persons will indeed join with us and help us sell the program rather than relying solely on ourselves. And we have gotten considerable assistance from the few that have volunteered up to this point. So it's a matter of selling in many ways.

I can recall a group of students from East, for example, putting on an assembly program, to another high school to encourage youngsters to come to East and this sort of thing. So when you talk about recruiting and selling, this has to be done in many, many ways and I think perhaps [704] Mr. Cruter outlined for you on Thursday, I think it was when he testified, that to use radio, television, and newspapers, and the youngsters and P-TA, and whatnot, and we simply haven't had time and we haven't had the right time of year to involve that number of people.

Q. Well, you did have all spring. A. For what?

Q. To recruit people for voluntary open enrollment. A. Right.

Q. What's the purpose, Dr. Koeppe, of voluntary open enrollment? A. I think it's indicated in the policy itself; to bring about integration in Denver Public Schools and better understanding between the races.

Q. Is there any educational purpose? A. I think this would be one of the objects of education, also. I don't see that these things are incompatible.

Q. Not necessarily incompatible, but they are consistent with the purposes of the school district, are they not? A. Yes, they are.

Q. Does not voluntary open enrollment transfer from the school district to the parents this educational decision? A. Perhaps that particular aspect of it does, but there are other programs that can supplement voluntary open [705] enrollment, such as the cultural arts and Balarat and secondary center.

Q. Is there any educational advantage to integration, that decision must be made entirely by the parents, is that correct? A. Under voluntary open enrollment, yes.

Q. So that you have abdicated any authority on that possibility? A. I have?

Q. The school district. A. It could be interpreted that way, I guess.

Q. Now, would it be fair to say that one of the problems in predominantly black schools is the problem of educational motive? A. Yes.

Q. Do those who lack motive to achieve in school have the motive to participate in voluntary open enrollment? A. I don't know. I would tend to think not.

Q. There's sort of a logical inconsistency there, isn't there, Dr. Koeppe? A. I didn't understand.

Q. Asking those who suffer from the problem to recognize it and perceive how to solve it. A. This could be.

Mr. Barnes: No further questions.

Preliminary Injunction

(Filed July 29, 1969)

This matter having come on for hearing on the motion of plaintiffs for a preliminary injunction, and the Court having heard the testimony of the witnesses, having reviewed and considered the exhibits in evidence herein, and having heard the statements of counsel:

The Court finds that:

1. The Court has jurisdiction over the subject matter of this action under 28 U.S.C. Sections 1343(3) and 1343(4). This is a civil action authorized by law and arising under Title 42 U.S.C. Section 1983 and the Fourteenth Amendment of the Constitution of the United States;

2. The Court has jurisdiction over the parties herein;

3. Plaintiffs and the classes which they represent have no adequate remedy at law;

4. Unless this preliminary injunction issues, plaintiffs and the classes which they represent will suffer irreparable injury;

5. Plaintiffs and their classes have demonstrated a reasonable probability that they will ultimately prevail upon the merits on a full trial herein.

Based on the Court's oral findings and conclusions of July 23, 1969, it is

ORDERED, ADJUDGED AND DECREED that the motion for a temporary injunction should be and the same is hereby granted. The defendants, their agents and servants are

enjoined and restrained, during the pendency of this action, from any conduct which would modify the status quo as it existed prior to June 9, 1969, in respect to acquisition of equipment, destruction or relocating of documents, writings and memoranda, and from any action which would seek to implement Resolution 1533 insofar as the said Resolution would rescind integration policies which existed on June 9, 1969, and prior thereto, and insofar as it would adopt policies which would have the effect of restoring the segregation which existed prior to the enactment of Resolutions 1520, 1524 and 1531.

This temporary injunction shall continue during the pendency of this suit and until the action is tried on its merits.

Defendants are granted ten days from and after July 23, 1969, for the purposes of seeking an appeal or review of this ruling.

DATED at Denver, Colorado, this 29th day of July, A.D. 1969.

BY THE COURT:

/s/ WILLIAM E. DOYLE
WILLIAM E. DOYLE, Judge
United States District Court

Memorandum Opinion and Order of District Court

(Dated July 31, 1969)

Reprinted in Appendix to Petition for Certiorari, pp. 1a-19a

See 303 F. Supp. 279

Opinion of Court of Appeals

(August 5, 1969)

JULY TERM, AUGUST 5TH, 1969

Before the Honorable Alfred P. Murrah, Chief Judge and Honorable Jean S. Breitenstein and Honorable John J. Hickey, Circuit Judges

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SCHOOL DISTRICT NUMBER ONE, DENVER, COLORADO, *et al.*,

Appellants,

404-69

vs.

WILFRED KEYES, *et al.*,

Appellees.

Appeal from the United States District Court for the District of Colorado.

This case is before the court on the motion of the appellants for a stay of a preliminary injunction. That injunction after ordering the Board of Education to refrain from conduct "in respect to acquisition of equipment, destruction or relocating of documents, writings and memoranda" prohibits any action

> "which would seek to implement Resolution 1533 insofar as the said Resolution would rescind integration policies which existed on June 9, 1969, and prior thereto, and insofar as it would adopt policies which would have the effect of restoring the segregation which

existed prior to the enactment of Resolutions 1520, 1524 and 1531."

We doubt that the order is sufficient to satisfy the requirements of Rule 65(c), F.R. Civ. P., that every injunctive order "shall be specific in terms." The reference to "policies" would seem to require definition.

We interpret the intent of the order to be that the Board of Education must comply with, and operate under, the policies expressed in Resolutions 1520, 1524 and 1531. This interpretation conforms to that of the counsel who have briefed and argued the matter. If this interpretation is correct, we are presented with a problem that was neither presented to nor considered by the district court. If the interpretation is not correct, the injunctive order lacks the required specificity.

The problem is that Resolutions 1520, 1524 and 1531, as we understand them and as counsel present them, seeks to achieve racial balance by requiring the transportation of pupils or students from one school to another. Title IV, §407(a), 42 U.S.C. §2000c(6)(a), of the 1964 Civil Rights Act, contains the following proviso:

> "provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards."

The quoted language is on its face a limitation on the power of a federal court to achieve racial balance by trans-

portation of children from one school to another. Nothing to which our attention has been called in the record shows that this statute was either called to the attention of, or considered by, the trial court.

The question of the applicability and effect of the statute should be considered, in the first instance, by the trial court. We express no opinion in regard thereto. We decline to consider and determine a question of such importance on this application for a stay and on the basis of the record presented to us.

The procedural aspects of the case concern us. We credit all parties with a good faith desire to reach a wise solution of the problem posed by the desirability of achieving the requisite racial balance in the schools. A simple grant of the stay would prolong the litigation because then we would have to consider the appeal on its merits. The remand of the case at this time will enable the trial court to consider and act on the problem which is presented by the record before us.

Accordingly, the order granting the preliminary injunction is vacated and held for naught. The case is remanded to the district court for further proceedings.

WILLIAM L. WHITTAKER, Clerk

By: /s/ ANNE M. CAHST
Deputy Clerk

Supplemental Findings, Conclusions and Temporary Injunction by District Court

(August 14, 1969)

Reprinted in Appendix to Petition for Certiorari, pp. 20a-43a

See 303 F. Supp. 289

Opinion of Court of Appeals

(August 27, 1969)

Before Honorable Alfred P. Murrah, Chief Judge and Honorable Jean S. Breitenstein and Honorable John J. Hickey, Circuit Judges

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SCHOOL DISTRICT NUMBER ONE, DENVER, COLORADO, *et al.*,

Appellants,

No. 432-69

v.

WILFRED KEYES, *et al.*,

Appellees.

This matter is before the court on the motion of the defendants-appellants for a stay of the preliminary injunction issued by the district court on August 14, 1969. The injunction changes the attendance areas of various Denver schools to alleviate the racial segregation which the district court found to exist. It will require, indirectly if not directly, the transportation of students over greatly varying distances to and from contiguous and non-contiguous attendance districts.

The district court conducted an extensive hearing and entered carefully prepared findings of fact and conclusions of law. Although the findings of fact are contested by the appellants, we accept them for the purpose of our consideration of the case at this time. They represent a painstaking analysis of the evidence presented. They establish a racial imbalance in certain named schools. From the facts found, the district court either made a conclusion or drew

an inference, that the jure segregation exists in named schools. Its grant of the temporary injunction is grounded on the premise that there is de jure segregation. In the time permitted, we are unable to make an examination of the record and the law to determine whether the inference is reasonable or the conclusion legally justifiable.

The case presents the questions of (1) whether the neighborhood school concept shall yield to compulsory integration which will be achieved by the transportation of students to and from contiguous and non-contiguous attendance districts, and (2) whether such transportation may be ordered by a federal court in the light of the provisions of § 407(6)(a) of the Civil Rights Act of 1964, 11 U.S.C. § 2000c-6(a). The same questions are presented in Nos. 433-69, 434-69, and 435-69. An opinion in those cases is filed concurrently with this opinion.

The questions are important and difficult of resolution. This was recognized by the trial court. Its decision may be correct. We are in doubt. The parties impress upon us the need for prompt action. The Denver schools are scheduled to open on September 2. In the time permitted, we are unable to come to a conclusion whether the plaintiffs-appellees will prevail on the merits or are likely to prevail on the merits.

We are oath to disturb a preliminary action taken by an experienced trial judge. We must decide whether the public interest is best served by the maintenance of the status quo or by the acceptance of the injunctive order.

We note that the hearing did not encompass all of the issues tendered by the complaint; that the defendants-appellants have not answered but have a motion to dismiss pending; and that the trial court specifically reserved certain matters "pending consideration of this action at the

trial on the merits." We are impressed with the idea that the important and difficult questions presented should not be determined on an application for a preliminary injunction or in a manner which affects some but not all of the Denver schools. We question the piece-meal consideration of a city-wide problem. See the opinion filed today in Dowell v. Board of Education.

The United States Supreme Court has forbidden racial segregation in the schools and has demanded that desegregation be accomplished with all convenient speed. This mandate must be followed. In a metropolitan area like Denver, the attainment of the objective is closely allied to sociological and economic problems which do not lend themselves to judicial solution. Any plan of desegregation or integregation which is devised either by a court or by an administrative agency must depend for its success on the understanding cooperation of the people of the area. Such understanding and cooperation is perhaps more likely to result from actions taken after a full trial on the merits than on action which of necessity is hurried because taken on an application for a preliminary injunction.

On balance we believe that the public interest is best served by a maintenance of the conditions existing before the action was brought until the trial of the case on the merits and the entry by the district court of such final judgment as it deems appropriate. In recognition of the seriousness of the problem and the desirability of prompt action, we assure the parties that an appeal from a final judgment herein will be expedited and will be heard by the full court. See also Dowell v. Board of Education, supra.

The maintenance of the status quo requires the continuation of that portion of the preliminary injunction

which restrains the defendants-appellants from actions with respect to "acquisition of equipment, destruction or relocation of documents, writings and memoranda" related to the School Board Resolutions mentioned therein. Otherwise, the preliminary injunction issued by the United States District Court in its cause No. C-1499 entitled Wilfred Keyes, et al., v. School District Number One, Denver, Colorado, et al., is stayed and shall be of no force and effect until the further order of this court.

A true copy

Teste

William L. Whittaker
Clerk, U. S. Court of Appeals,
Tenth Circuit

By: /s/ ..... ! ! .....
Deputy Clerk

Dated: August 27, 1969

Order

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1969

WILFRED KEYES, *et al.*,

Applicants,

vs.

SCHOOL DISTRICT NUMBER ONE,
DENVER, COLORADO, *et al.*

UPON CONSIDERATION of a motion submitted by the applicants to vacate an order of the United States Court of Appeals for the Tenth Circuit issued in this case on August 29, and to reinstate the order of the United States District Court for the District of Colorado issued on August 14,

IT IS HEREBY ORDERED that the motion is granted, the order of the Court of Appeals is vacated and the order of the United States District Court is reinstated.

/s/ WILLIAM J. BRENNAN
Acting Circuit Justice

Dated this 29th day of August, 1969.

Opinion by Brennan, J. on Application for Vacation of Stay

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

WILFRED KEYES, *et al.*,

Applicants,

v.

SCHOOL DISTRICT NUMBER ONE,
DENVER, COLORADO, *et al.*

[August 29, 1969]

MR. JUSTICE BRENNAN, Acting Circuit Justice.

In this school desegregation case I am asked to vacate a stay by the Court of Appeals for the Tenth Circuit of a preliminary injunction entered by the District Court for the District of Colorado. The preliminary injunction has the effect of requiring partial implementation of a school desegregation plan prepared by School District No. 1, Denver, Colorado and then rescinded by that Board after changes in membership followed a school board election.

The Court of Appeals issued the stay pending decision of an appeal taken by the School Board from the preliminary injunction. I have concluded that the stay was improvidently granted and must be vacated. An order of a District Court granting or denying a preliminary injunction should not be disturbed by a reviewing court unless it appears that the grant of the injunction was an abuse of discretion. *Alabama* v. *United States*, 279 U. S.

229 (1929). Where a preliminary injunction has issued to vindicate constitutional rights, the presumption in favor of the District Court's action applies with particular force. The Court of Appeals did not suggest that the District Court abused its discretion. On the contrary, the Court of Appeals expressly stated that the District Court's finding of fact "represent a painstaking analysis of the evidence presented. They establish a racial imbalance in certain named schools. From the facts found, the District Court either made a conclusion or drew an inference, that de jure segregation exists in named schools. Its grant of the temporary injunction is grounded on the premise that there is de jure segregation."

The Court of Appeals nevertheless stated that it "must decide whether the public interest is best served by the maintenance of the status quo or by the acceptance of the injunctive order," since the time before the Denver schools open on September 2 was insufficient to permit an examination of the record to determine whether the District Court correctly held that this was a case of *de jure* segregation. It may be that this inquiry was appropriate notwithstanding the presumption in favor of continuing the preliminary injunction in force. But the reasons given by the Court of Appeals for striking the balance in favor of the stay clearly supplied no support in law for its action. It was not correct to justify the stay on the ground that constitutional principles demanded only "that desegregation be accomplished with all convenient speed." "The time for mere 'deliberate speed' has run out. . . ." *Griffin* v. *County School Board*, 377 U. S. 218, 234 (1964). "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now*." *Green* v. *County School Board*, 391 U. S.

430, 439 (1968). The obligations of the District Court was to assess the effectiveness of the School Board's plans in light of that standard. *Id.*, at 439. Since the Court of Appeals not only was unable to say that the District Court's assessment was an abuse of discretion, but agreed that it "may be correct," the stay of the preliminary injunction was improvident.

The Court of Appeals also seems to have based its action on the premise that public support for the plan might be developed if any order awaited final hearing; the Court of Appeals stated that a plan of desegregation "must depend for its success on the understanding cooperation of the people of the area." But the desirability of developing public support for a plan designed to redress *de jure* segregation cannot be justification for delay in the implementation of the plan. *Cooper* v. *Aaron*, 358 U. S. 1 (1958).

I therefore grant the application, vacate the Order of the Court of Appeals, and direct the reinstatement of the Order of the District Court.

Opinion of Court of Appeals

(September 15, 1969)

Before Honorable Alfred P. Murrah, Chief Judge, and Honorable Jean S. Breitenstein and Honorable John J. Hickey, Circuit Judges

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SCHOOL DISTRICT NUMBER ONE, DENVER, COLORADO, *et al.*,

Appellants,

No. 432-69

v.

WILFRED KEYES, *et al.*,

Appellees.

This matter is before the court on the motion of the defendants-appellants that the court amend its August 27, 1969, order by specifically holding that the district court abused its discretion in the grant of its August 14, 1969, preliminary injunction.

The record before us at the time of our order showed that Colorado has not, and never has had, any state imposed school or residential segregation. No discrimination in school transfers was either shown or claimed. No gerrymandering was shown or claimed. The district court's findings of de jure segregation, or a dual system, were confined to a small number of schools and were based on the failure or refusal of the School Board to anticipate population migration and to adjust school attendance districts to alleviate the imbalance resulting from such pop-

ulation shifts. We believed that in the circumstances public policy favored a maintenance of the status quo until the problem could be considered and determined on a city-wide basis.

The situation has now changed. Our stay was vacated and the preliminary injunction restored. The schools have opened in compliance, so far as we know, with the requirements of the preliminary injunction. Any change now ordered would have a disruptive effect on the students, the teachers, and the general school administration. Again looking at the problem from the standpoint of public policy, we are convinced that, for the present, we should not disturb the preliminary injunction.

The resolution of the issues is of great public importance. All persons in interest are entitled to be heard. We direct the attention of the district court and of counsel to the fact that in the litigation concerning the Oklahoma City schools we permitted the intervention of persons having a litigible interest. During the argument of the motion under consideration, we were told that the case in the district court is going forward expeditiously and that a trial date in November of this year has been set tentatively. In the circumstances we believe that further proceedings on this appeal should await the disposition of the case on its merits. We hope that the case may be promptly tried on the merits and decided. We renew the statement that the court of appeals will expedite any appeal. Nothing contained herein, or in the August 27, 1969, order, shall be taken as an expression of opinion by this court on any issue that may be presented in the trial and determination of the merits of the case.

The motion is denied and further proceedings on the appeal are held in abeyance until the further order of the court.

Dated: September 15, 1969

A true copy

Teste

William L. Whittaker
Clerk, U. S. Court of Appeals,
Tenth Circuit

By: /s/ Joyce R. Struck
Deputy Clerk

Answer

(Filed October 6, 1969)

In the United States District Court
For the District of Colorado

Civil Action No. C-1499

Now Come all Defendants herein, except Rachel B. Noel, John H. Amesse and James D. Voorhees, Jr., by their attorneys, Henry, Cockrell, Quinn & Creighton, and Kenneth Wormwood, and for their answer to the complaint allege:

First Defense

The complaint fails to state a claim against said Defendants upon which relief can be granted.

Second Defense

Defendants expressly deny any allegation of the complaint which charges or implies that they discriminate against Plaintiffs or any other child within Defendants' jurisdiction on the basis of race, color or ethnicity; Defendants expressly deny any allegation of the complaint which charges or implies that educational opportunity afforded to the children within Defendants' jurisdiction is based upon race, color or ethnicity; Defendants expressly and categorically deny that any of their actions referred to in the complaint have deprived Plaintiffs or any other person within Defendants' jurisdiction of equal protection of the law.

Answer

THIRD DEFENSE

Defendants deny each and every allegation contained in the complaint except as follows:

I. *Jurisdiction*

As to those allegations hereunder which describe what is sought by Plaintiffs by their complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth thereof; and Defendants expressly deny that this Court has jurisdiction over the Defendants and the subject matter of this action.

II. *Parties*

1. Defendants admit, based upon the records of Defendant School District: that the minor Plaintiffs are citizens of the United States of America and are, except for Plaintiff Gregory L. Wade, as to whom Defendants have no current information indicating that said Plaintiff is presently enrolled in school in this school district, citizens of the State of Colorado and residents within School District No. 1; that, except for Plaintiffs Gregory L. Wade and Rhonda O. Jennings, the places of residence of the minor Plaintiffs are at the addresses of their respective parents and aunt stated at the foot of the complaint; and that the minor Plaintiffs, except Plaintiff Gregory L. Wade, are now (October, 1969) attending schools as follows:

Christi Keyes	Hallett Elementary
Kris M. Colley	Hill Junior High
Mark A. Williams	East High
Rhonda O. Jennings	Kepner Junior High
Denise Michelle Starks	Palmer Elementary

Carlos A. Perez	West High
Sheila R. Perez	Baker Junior High
Terry J. Perez	Greenlee Elementary
Dinah L. Becker	Merrill Junior High
Sarah S. Weiner	Hallett Elementary

Defendants admit the allegations contained in paragraphs 2, 3 and 4 of Part B under this heading. As to Defendant School District, its full corporate title is School District No. 1 in the City and County of Denver and State of Colorado, it is created pursuant to Articlie XX, §7, of the Colorado Constitution and operates pursuant thereto and to the general school laws of the State of Colorado.

2. Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of those allegations in paragraphs 1 and 2 of Part A under this heading, except those admitted in the preceding paragraph, and therefore deny the same.

III. *First Cause of Action*

Defendants admit that Defendant Board of Education passed and enacted Resolutions Nos. 1520, 1524 and 1531 on the dates alleged; that the minor Plaintiffs, on the date of the commencement of this action, resided within the attendance areas alleged; that Defendant Board of Education has, prior to the commencement of this action, initiated the purchase of 27 school buses; and Defendants admit the allegations contained in the first two sentences of Part L and all of Part M under this heading.

Answer

IV. *Second Cause of Action*

1. As to the allegations contained in the complaint under the Second Cause of Action, to the extent that such allegations incorporate by reference allegations of the First Cause of Action, Defendants incorporate herein by reference their answer to such allegations hereinabove set forth.

2. As to the other allegations in the complaint under said Second Cause of Action, Defendants allege that Defendant School District has established school attendance area boundaries on the basis of nonracial criteria which result in the assignment of pupils to schools generally nearest their places of residence, but expressly deny that any attendance boundaries have ever been created or altered with the intent of segregating pupils because of race or with that effect.

3. Defendants admit that in some schools in the School District pupils are grouped, in some courses, according to ability in those courses and irrespective of race or ethnicity, but Defendants deny that any such ability grouping segregates or separates pupils on the basis of race or ethnicity or denies to any pupil an equal educational opportunity, and deny that such grouping constitutes a "track system" as alleged.

WHEREFORE, Defendants pray that the complaint be dismissed, that the preliminary injunction heretofore entered herein be dissolved, that judgment be entered herein in favor of Defendants and against the Plaintiffs, that De-

fendants recover their costs herein, and for such other and further relief as may to the Court appear proper.

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Attorneys for all Defendants except John H. Amesse, Rachel B. Noel and James D. Voorhees, Jr., in their individual capacities.

[CERTIFICATE OF MAILING OMITTED]

Memorandum Opinion and Order

(Filed October 17, 1969)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-1499

THIS MATTER having come on to be heard on September 11, 1969, upon the motions of certain of the defendants herein, and the Court, having considered the briefs filed herein, and having heard the statements of counsel, hereby finds and orders as follows:

Nature of the Action

This is a civil action brought under 42 U.S.C. § 1983 wherein jurisdiction of the subject matter is founded upon 28 U.S.C. § 1343(3). Plaintiffs bring this suit as a class action to redress the alleged deprivation of their rights under the equal protection clause of the Fourteenth Amendment, maintaining that defendants have unlawfully segregated minority Negro and Hispano children in the public schools of the Defendant District. The relief sought is solely equitable in nature, being an injunction against the continuation of the allegedly segregated schools through the requirement of a plan for desegregation of said schools.

Moving Defendants

The moving defendants are:

School District No. One, Denver, Colorado;

The Board of Education of School District No. One, Denver, Colorado;

Memorandum Opinion and Order

William C. Berge, Stephen J. Knight, Jr., James C. Perrill, Frank K. Southworth, John H. Amesse, James D. Voorhees, Jr., and Rachel B. Noel, in their official representative capacities as members of The Board of Education of School District No. One, Denver, Colorado; William C. Berge, Stephen J. Knight, Jr., James C. Perrill and Frank K. Southworth, in their individual capacities; and

Robert D. Gilberts, individually and as Superintendent of Schools of the District.

Motions Presented

The movants premised their motion upon two major points: (1) that § 1983 does not create a cause of action against either (a) the District, because it is a "municipality" and under the holding of *Monroe* v. *Pape*, 365 U.S. 167 (1961) not a "person" as that term is used in § 1983;[1] (b) the individual defendants in their official representative capacities, because such a claim would be the equivalent to a suit against the School District itself,[2] and (c) the defendants as individuals, because, as such they are powerless to grant the relief requested. Secondly, defendants asserted that since there was no cause of action there was no subject matter jurisdiction under 28 U.S.C.

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[1] 42 U.S.C. § 1983 provides:

"Every *person*, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." (Emphasis added).

[2] *See Harkless* v. *Sweeny*, 38 Law Week 2007 (S.D. Tex. 1969) discussed *infra*.

§ 1343(3). However, defendants have abandoned this latter point, and properly so.[1]

For the reasons set forth below, this Court concludes that the contentions are without merit and that the motions should be denied.

School District No. One was created by Article XX, § 7 of the Colorado Constitution, and is governed by the general school laws of the State as to its operation, the election of members of its Board of Education, etc. However, the District has cited no authority for the proposition that it is a "municipality"; it is simply a governmental agency of the State.

In *Monroe* v. *Pape, supra,* relied upon by defendants, the Court had before it a claim for *damages* under § 1983 against the City of Chicago for the actions of city police officers which abridged plaintiffs' constitutional rights. The Court, after carefully reviewing the legislative history of the Act of 1871 concluded that Congress did not intend to bring municipal corporations within the ambit of § 1983.

Several factors lead this Court to the conclusion that the holding of *Monroe* should not be extended to exclude the School District or the defendants in their official capacity from § 1983. Since the *Monroe* decision the Supreme Court has considered numerous cases under § 1983 which involved governmental agencies and officers, without questioning whether there was a cause of action: *Rinaldi* v. *Yeager,* 384 U.S. 305 (1966); *Baker* v. *Carr,* 369 U.S. 186 (1962); *Reynolds* v. *Sims,* 377 U.S. 533 (1964); *WMCA* v. *Lomenzo,* 377 U.S. 633 (1964); *Tinker* v. *Des Moines Indep. Community School District,* 393 U.S. 503 (1969); *Lucas* v. *44th General Assembly,* 377 U.S. 713 (1964); *Raney* v.

[1] *Bell* v. *Hood,* 327 U.S. 678 (1946).

Board of Education of Gould School District, 391 U.S. 443 (1968).

Secondly the legislative history relied upon by the Court in *Monroe* shows that the concern of Congres was about the imposition of vicarious liability for *damages* upon a city, county or parish. There is nothing in that history which supports the contention that every other type of state or local governmental agency was also to be excluded. In fact such an exclusion would practically render § 1983 meaningless as a means to afford affirmative relief, particularly equitable relief, for the deprivation of Constitutional rights. In *Monroe* it was recognized that the creation of such affirmative relief was one of the objectives of the Act. *Id.* at 196-98, concurring opinion of Justices Harlan and Stewart.

Thirdly at least two Courts of Appeals which have considered this question have held that *Monroe* does not apply except where damages are being sought against a defendant such as a city, county or other municipal corporation. In *Schnell* v. *City of Chicago*, 407 F. 2d 1084 (7th Cir. 1969) newsmen brought suit under §1983 for injunctive relief against the City, the superintendent of police and unidentified police officers to prevent interference with the plaintiffs' rights to gather and report news. Relying on *Monroe* the trial court dismissed the suit for failure to state a claim. The Court of Appeals reversed, holding that since the suit only sought equitable relief, *Monroe* did not apply. See also *Adams* v. *City of Park Ridge*, 293 F. 2d 585 (7th Cir. 1961). The Fifth Circuit reached the same result in *United States* v. *City of Jackson, Miss.*, 318 F. 2d 1 (5th Cir. 1963), as did the District Court for the Southern District of Alabama in *United States* v. *Clark*, 249 F. Supp. 720 (S.D. Ala. 1965).

Harkless v. *Sweeny, supra,* involved a suit for damages and reinstatement brought by Negro school teachers under §1983 against the school district, the superintendent of schools and the members of the school board, both individually and in their official capacities. The trial court dismissed the suit for failure to state a claim as to the district and the individual defendants in their official capacities relying primarily upon the *Monroe* case and several trial court opinions.[1] This Court has considered the *Harkless* case and the cases therein relied upon, and has concluded that insofar as it pertained to equitable relief, that case gave too broad an application to *Monroe.* We believe the better authority to be such cases as *Adams* v. *City of Park Ridge,* and *United States* v. *City of Jackson, Miss., supra.*

Since we have held *Monroe* inapplicable to an entity such as the School District, there is similarly no compulsion to exclude these defendants either in their official or individual capacities from the meaning of "persons" under §1983. Accordingly, it is hereby

ORDERED, ADJUDGED AND DECREED that the motions to dismiss for failure to state a claim upon which relief can be granted be and hereby are denied.

Defendants shall have 15 days from September 11, 1969, to file an answer herein.

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[1] *Johnson* v. *Hackett,* 284 F. Supp. 933 (E.D. Pa. 1968); *Baxter* v. *Parker,* 281 F. Supp. 115 (N.D. Fla. 1968); *Glaney* v. *Parole Board,* 287 F. Supp. 34 (W.D. Mich. 1968).

Memorandum Opinion and Order

Dated this 16 day of October, 1969.

BY THE COURT

/s/ .....
William E. Doyle
United States District Judge

APPROVED AS TO FORM:

/s/ .....
Gordon G. Greiner
Attorneys for Plaintiffs

HENRY, COCKRELL, QUINN & CREIGHTON

By .....
Attorneys for Defendants

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[40] * * *

Mr. Greiner: Our first witness will be Dr. Paul Klite.

PAUL KLITE, a witness called by and on behalf of plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Greiner:

The Court: Please state your name and address.

The Witness, Paul Klite, 1434 Birch Street in Denver.

By Mr. Greiner:

Q. You're the same Paul Klite who testified at the preliminary injunction hearing in the summer of 1969? A. I am.

Q. Dr. Klite, first turning your attention to old Manual High School, have you had occasion in the course of [41] preparing to testify here to examine maps, student enrollment and capacity utilization data for old Manual and East High Schools for the period 1926 through 1952? A. Yes.

Q. And with respect to new Manual High School, which opened, as I recall, in 1953, have you also studied school district data regarding student enrollment and capacity utilization on the boundaries of new Manual High School? A. Yes, I have.

[42] Q. What was the source of this data that you examined? A. The data was obtained from several sources. For the most part, official boundary maps were not available prior to the year 1959. Information on the boundaries was obtained from school board minutes, from newspaper clippings, from reviews of various documents at the school

district, at the public libraries, and review of PTA membership lists, to establish location of students, and from these types of sources the enrollment data and the boundary data was put together.

Q. Now, with respect to the school boundaries, Dr. Klite, of old Manual High School, you have before you what has been marked for identification as Plaintiffs' Exhibit 200, purporting to be a map showing the boundaries of Manual High School in 1962. Would you kindly tell the Court what the source of Exhibit 200 is? A. Yes, the map is a map from the 1960s, from which boundaries have been erased. The superimposition of boundaries is taken from the superintendent's circulars at 1926, in which the boundaries of Manual were verbally indicated.

Q. How were they indicated? A. They were indicated by elementary school area, occasionally by street. Some of the limitations of the [43] boundaries are not indicated, because they extended to places like the city limits, for which no specific street locations were given.

* * * * *

[51] * * *

By Mr. Greiner:

Q. Dr. Klite, does Exhibit 200 purport to depict all of the boundaries of Manual? No.

Q. Why not? [52] A. As I have just stated, this is the first of a series of exhibits focusing on the Manual-East boundary, so that portion of the boundary between those schools is what is listed.

Mr. Greiner: Well, Your Honor, we again offer Exhibit 200 solely for the purpose of showing that in 1926 the attendance area boundary between East

and Manual, which is all the exhibit purports to depict, were as shown on Exhibit 200.

Mr. Ris: Still object. He says he didn't even check what all the elementary school boundaries were, and this is what it is based on.

The Court: Overruled, it can be explained by either side to a certain degree. We will receive it for whatever value it may have in establishing the locations and boundaries of that area.

(Plaintiffs' Exhibit 200 was received in evidence.)

Q. Dr. Klite, with reference to Exhibit 200, where was the eastern boundary for the attendance area of Manual High School in 1926? A. This was the Adams Street and Columbine Elementary School area, which would be approximately Colorado Boulevard.

Q. Now what about the attendance area for Manual with respect to the area north of City Park? [53] A. This was in the Manual district.

Mr. Ris: Just a moment, if the Court please, this witness is not an expert. He merely says that he went to certain records and made a map.

Now, if he made the map, it is going to speak for itself, and we object to any interpretation or any construction or any opinion by this witness pertaining to that map or things not shown thereon.

The Court: Well, he can express himself as to what appears in a map and comment on it.

Mr. Greiner: That's all the question goes to, Your Honor, is what does the exhibit itself depict.

The Court: Very well.

Q. Does Exhibit 200 depict an attendance area for Manual north of City Park, Doctor? A. Yes.

Q. What are the bounds of that attendance area for Manual? A. Southern boundary is 26th Avenue. The eastern boundary is Colorado Boulevard. No northern boundary is shown.

Q. East of Colorado Boulevard, is there depicted on Exhibit 200 an attendance area which was purportedly optional between both East and Manual? A. Yes, sir.

[54] The Court: That's east of Colorado?

The Witness: Yes, sir.

Q. Calling your attention to Exhibit 356, Doctor—

The Court: He has already testified to that, hasn't he?

Mr. Greiner: Your Honor, the authenticity of Exhibit 356 has been stipulated to by counsel, the nature of the stipulation being that no formal foundation is required for its introduction.

Dr. Klite, I am handing you what has been marked for identification as Exhibit 356, and, Your Honor, at this time we would like to offer into evidence Exhibit 356, being a book concerning the new Manual High School. We are offering it for the purpose of putting in the record the racial and ethnic statistical data which appears in the exhibit at Page 5 on Chart 1.

The Court: Do you object to it?

Mr. Ris: Well, there are other things in that that I think may be germane to this case and I presume you are offering the entire pamphlet, even though you may refer to the one chart.

Mr. Greiner: That's correct.

Mr. Ris: All right, we have no objection to the entire pamphlet being in.

The Court: All right, it will be received.

* * * * *

[56] * * *

By Mr. Greiner:

Q. Dr. Klite, referring to Exhibit 356, page 5, Chart 1, what does Chart 1 depict? A. Chart 1 is a table showing the racial distribution of Manual students from 1926 to 1950.

Q. From what are the categories reported in Chart 1? A. For each year, the number and percentage of white, colored, Spanish and Oriental students is listed.

Q. Now again referring to Chart 1, what happened to the racial composition of old Manual between the years of 1930 and 1950?

Mr. Ris: If the Court please, it speaks for itself.

The Court: We will let him comment on it. It may save some time.

A. In 1926 Manual was 87.2 percent white, 10 percent Negro. Over the period of the next 24 years the Anglo population gradually declined to a point where by 1945 it was 47½ percent Anglo, 20 percent Negro, about 16 percent Hispano and 15 percent Oriental.

Q. Dr. Klite, do you recall when the new Manual High School was opened? A. 1953.

Q. Handing you what's been identified as Plaintiffs' Exhibit 203, Dr. Klite, can you identify that for us? A. Yes, this is a reconstruction of the boundaries of [57] Manual High School in 1955.

Q. That would then be the boundaries for new Manual High School? A. That is correct.

Q. And what is the source of the boundary data depicted on Exhibit 203? A. There are several sources; one of these superintendent's circulars for 1936. The other is a map in a 1955 site study report which shows that boundary.

Mr. Greiner: Your Honor, at this time we would offer Plaintiffs' Exhibit 203.

* * * * *

[61] * * *

The Court: We will receive it for whatever value it may have, bearing in mind that it may change as time goes on; as the trial progresses.

(Whereupon, Plaintiffs' Exhibit 203 was received in evidence.)

Direct Examination by Mr. Greiner (Cont'd):

Q. Referring then to Exhibit 203, Doctor, what was the eastern boundary line for Manual? A. The eastern boundary line was an irregular line that ran up York Street south to 34th Avenue, and then over about three and a half blocks to the alley between Race and High, then south to 28th Avenue, then over one more block to the alley—in the alley between Williams and High, which was one-half block from Manual; then south to 22nd Avenue and then westward down a stair-step line.

The Court: This is as of 1953?

The Witness: This boundary was probably created in 1936. In 1953 when new Manual was built, that was the boundary, yes, sir.

Paul D. Klite—for Plaintiffs—Direct

Q. Dr. Klite, next calling your attention to what's [62] been marked for identification as Plaintiffs' Exhibit 210, will you please identify Exhibit 210. A. Exhibit 210 lists the number of students and the percent capacity utilization at Manual and East Highs for the years 1951 through 1961 as derived from the statistical reports of the Denver Public Schools, several years for which the statistics are not available, are missing.

Q. What are these statistical reports which you describe? A. These are bound volumes which listed statistical indicia of membership and attendance at all of the schools and were published yearly up until the sixties.

Q. By whom is this data published? A. By the Denver Public Schools.

Mr. Greiner: Your Honor, at this time we would offer Exhibit 210.

Mr. Ris: I am going to object, Your Honor. I just want the record to reflect that it is incomplete and some of the columns are absent. It omits 1955 completely. But, we will have an exhibit that will fill in all the gaps as well.

The Court: Mr. Brega?

Mr. Brega: No objection.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 210 was received in evidence.)

[63] *By Mr. Greiner:*

Q. Dr. Klite, referring to Exhibit 210, in 1953 when new Manual was opened, what was the capacity utilization? A. There were 1,003 students for capacity utilization of 64 percent.

Q. And is the capacity utilization of East High School also depicted on Exhibit 210? A. Yes. East was at 100 percent capacity.

The Court: What was the percentage of utilization at Manual?

The Witness: Sixty-four percent.

Q. How many students did East have at that time? A. East had 2426 pupils.

Q. Now with respect to Manual in 1953, were there any empty seats in Manual? A. The capacity of Manual was 1560. There were approximately 550 empty seats.

Q. Next, Doctor, I would like to call your attention to Plaintiffs' Exhibit 401. Would you please identify Exhibit 401. A. Exhibit 401 shows the number and percent Negro enrollment at selected schools for the years 1949 to 1956.

Q. What is the source of the data reflected in Exhibit 401? A. These were taken from the principals' reports that [64] were made available to us by the defendants a few weeks ago.

Mr. Greiner: Your Honor, at this time we would offer Exhibit 401.

The Court: May I see it, please.

Mr. Ris: No objection.

Mr. Brega: No objection, Your Honor.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 401 was received in evidence.)

Q. Dr. Klite, referring to Exhibit 401, does it depict the percentage of Negro enrollment at Manual High School in 1953? A. Yes, it does.

Q. What is shown there? A. It shows that the Negro percentage was 35.

Q. And what was the Negro percentage enrollment at East High School in 1953? A. Two.

Q. Pardon? A. Two percent.

Q. Now, in January of 1956, Dr. Klite, was there a proposal made by the school administration for a change in the boundary lines between Manual and East? A. Yes, there was.

Q. Calling your attention to what's been marked as [65] Exhibit 332, can you identify Exhibit 332 for us? A. Yes, this is a copy of the School Board minutes of January 11, 1956, dealing with the proposed boundary changes.

Q. Does Exhibit 332 describe the proposed change? A. Yes, it does.

Q. What is the source of Exhibit 332? A. These are the School Board minutes.

Mr. Greiner: Your Honor, we would offer 332 at this time.

Mr. Ris: May I see it, please? May I ask counsel, this indicates proposed boundaries and does not show enactment or adoption as of January 11, 1967? You are not purporting to show the adoption or enactment?

Mr. Greiner: That's correct, Exhibit 333 will describe when they were actually effected.

Mr. Ris: All right, no objection to Exhibit 322 as merely showing a proposal.

The Court: It is received.

(Whereupon, Plaintiffs' Exhibit 322 was received in evidence.)

Q. Dr. Klite, with reference to Exhibit 401, you stated that in 1953 Manual was 35 percent Negro? A. Yes, sir.

Q. Would you refer again to, please, Chart 1 in Exhibit 356? What's the last year reported in Chart 1? [66] A. 1949-50.

Q. In 1949, what was the percent Anglo enrollment? A. 40.7.

Q. What was the percent Hispano? A. 23.5.

Q. Do we know, Dr. Klite, whether or not when Manual opened in 1953 it was predominantly a minority school? A. We do not have figures that show the Hispano enrollment in 1953.

Q. But we do know what it was in 1949 and '50? A. Yes, sir.

Q. Calling your attention, Dr. Klite, to Exhibit 332, would you please describe the boundary change which was proposed as reflected in Exhibit 332 between Manual and East High School? A. Yes, this is listed on page 15 of the Board minutes, which says: "A. The area from York Street to Franklin, between 21st and 17th, will remain optional between East and Manual. The remainder of the area west of York Street and north of 17th, which is presently optional between East and Manual High Schools will become Manual District."

Q. Dr. Klite, have you had occasion to study the census data from 1950 with respect to the racial composition of the neighborhood which was to be affected by the proposed boundary change which you have just described? [67] A. Yes.

Q. What census data did you use or inspect? A. The 1950 census enumeration district data for that part of Denver in the area of the Manual School District.

Paul D. Klite—for Plaintiffs—Voir Dire

Q. These were the enumeration districts? A. Yes, sir.

Q. What are the sizes of enumeration districts? A. They vary considerably, depending upon the population. In this area, the average size was about six square blocks.

Q. And how might the population within a single enumeration district vary? A. In these districts, the population varied from about 100 to 1,000 people.

Q. Now, Dr. Klite, based upon your examination of the 1950 census data, have you prepared an exhibit which depicts the racial composition of the neighborhood and the area to be affected by the boundary change? A. Yes, I have.

Q. And which exhibit is that? A. 211-A.

Mr. Greiner: Your Honor, at this time we would offer Exhibit 211-A into evidence.

The Court: Is this related to 332?

Mr. Greiner: At the moment, 211-A is being overlaid [68] on Exhibit 203, and it simply shows the census data for the area described in Exhibit 332, Your Honor.

The Court: Any objection to Exhibit 211-A?

Voir Dire Examination by Mr. Ris:

Q. Do I understand, Dr. Klite, that you used 1950 data, to which you are now referring, to conditions in 1956? A. No, the census data is 1950 data.

Q. And you are relating that to boundary changes made in 1956? A. I am going to relate it to population in 1950.

Q. Was there a boundary change in 1950? A. No, sir.

Q. Your testimony is with reference to boundary change in 1956, is it not? A. It will be, yes, sir.

Q. Are you testifying with respect to this overlay then with respect to the 1956 boundary change? A. Well, counsel has phrased it in those terms. I am testifying to the 1950 population data.

Q. Now, do you have any statistics to show what relation that has to the 1956 population data for the same area? A. We will have data to show for that, yes, sir.

Q. Do you have it? A. It is in Exhibit 401.

[69] Mr. Greiner: Your Honor, all 211-A is is a reference point in 1950, and we will then offer to update to 1956 the racial characteristics of the affected neighborhood. We have to start somewhere.

Mr. Ris: Well, Exhibit 401 relates to what he has already testified to, the percentage of Negro enrollment at Manual and East in 1953, and has all other years, also, but we object as to a matter of relevancy of a census taken in 1950 and attempting to show that it's accurate in 1956.

Mr. Greiner: Your Honor, if there is any doubt, we are not saying that Exhibit 211-A reflects the racial composition of the affected neighborhood in 1956. It is not offered for that purpose. It is offered to show what the racial composition was in 1950.

The Court: I don't suppose there was a census in 1956.

Mr. Greiner: No, it was taken in '50.

The Court: Well, we will receive it for whatever value it may have.

(Whereupon, Plaintiffs' Exhibit 211-A was received in evidence.)

Direct Examination by Mr. Greiner (Cont'd):

Q. Dr. Klite, referring to Exhibit 211-A, what is the blue area depicted on the exhibit? [70] A. These are groups of enumeration districts, each one having a Negro population of greater than 50 percent and having an average of 82 percent Negro in 1950.

Q. Looking to the east on Exhibit 211-A, what does the yellow area represent? A. These are groups of enumeration districts, each having a population of less than 4 percent and having an average population of 0.4 percent.

Q. Finally, with respect to the red area, what does the red area on Exhibit 211-A depict? A. These are enumeration districts having Negro populations between 4 and 50 percent. The percent Negro population of each enumeration district is listed on the district.

Q. Well, according then to Exhibit 211-A, Doctor, was there any discernible residential racial line disclosed by the 1950 census?

Mr. Ris: If the Court please, that's calling for a conclusion now, and this is not within this man's expertise. We will object to his interpretations and conclusions.

The Court: I think you are going to have to establish him as an expert witness.

Mr. Greiner: Well, Your Honor, the exhibit itself I think shows the great variance.

The Court: Well, if it does, then we don't need any expert testimony on it.

[71] Mr. Greiner: I don't believe it is expert testimony.

The Court: Well, it is a conclusion. Conclusions, the general rule is they are inadmissible, because the

average lay mind can draw the inference that is apparent. When it gets into a field of expertise, why, we call on the experts.

If you say that the lay mind can fathom this, why, it is not necessary really to have any conclusory testimony on it.

Mr. Greiner: Very well, Your Honor.

Q. Dr. Klite, referring to Exhibit 211-A, is there any relationship between the census data reflected in 211-A and first of all, the eastern boundary for old Manual?

Mr. Ris: If the Court please, this again is either an expert matter or it is a conclusion by a layman. The exhibits are in, and they will speak for themselves without conclusions or editorializing. We object to it.

The Court: Well, I think it will be helpful if he would describe the kind of preparation that he has made for this, what kind of studies he has done and what analysis he has carried out as a foundation for this.

Mr. Greiner: I thought we had already done that, Your Honor, the fact that he had studied the 1950 census data that 211-A depicts, the census data within the area with which we are concerned.

Now, we are simply relating the census data to [72] something already in evidence, namely, the boundary line in 1950 for old Manual.

The Court: Well, you are asking him to give an analysis and to draw a conclusion, I assume.

Mr. Greiner: No, I am simply asking him if as a matter of objective fact disclosed by Exhibit 211-A

overlaid on Exhibit 203 there is any relationship between the census data and the boundary line for old Manual.

The Court: Well, you are asking him to make a deduction which is exactly the same thing. Do you feel that this is a deduction that wouldn't occur to the average man?

Mr. Greiner: No, Your Honor, I think any average man who overlaid 211-A on 203 can see that the relationship exists. I am merely pointing it out, wishing to point it out, through the witness.

The Court: All right, go ahead, see what he says, hear what he says.

Q. Dr. Klite, was there any relationship between the racial composition of the neighborhood as depicted in Exhibit 211-A and, first of all, the boundary for old Manual? A. The general area indicated in blue on 211-A in which each enumeration district is over 50 percent Negro is eastern boundary as approximately Race and High Streets.

Q. Pardon me, where was the eastern boundary for old Manual? [73] A. The eastern boundary ran between the alley of Race and High north of 28th and High and Williams south of 28th.

The Court: You mean the old Manual?

The Witness: Yes, sir.

Q. Now, Dr. Klite, with respect to Exhibit 203, was there any change between the boundary for old Manual, which you have just described, and the boundary for new Manual, which is depicted on Exhibit 203? A. Not that I am aware of.

Q. Dr. Klite, between 1950 and 1956, referring your attention to Exhibit 401 again, does that exhibit reflect a change in Negro enrollment at certain of the elementary schools in this area which we are now discussing? A. Yes, it does.

Q. Referring to Exhibit 401, what does the exhibit show as to the change in the racial composition at Columbine Elementary School? A. It shows that Columbine in 1949 was 13 percent Negro, that the Negro percentage increased yearly until by 1954 Columbine was 54 percent Negro.

Q. Where was the Columbine district located? A. It was located approximately half east of York Street and half west of York Street.

Q. Now, with respect to Harrington Elementary School as depicted on Exhibit 401, what was the racial composition [74] of Harrington Elementary School? A. Harrington had no Negro pupils until 1952, when it had one Negro pupil. The Negro population of Harrington then began to increase to by 1956 it was 20 percent Negro.

Q. Where was the Harrington district located? A. It was entirely east of York Street.

Q. All right, and what does Exhibit 401 show as to the racial composition of Whittier Elementary School? A. Whittier School was 96 percent Negro in 1949 and remained predominantly Negro throughout the entire period of 1949 to 1956.

Q. Where was the attendance area for Whittier Elementary School? A. The eastern border of Whittier is exactly the same as the eastern border of Manual.

Q. All right. A. And the southern portion.

Q. Finally, what does Exhibit 401 show with respect to the racial composition of Wyman Elementary School?

A. Wyman, which had been 20 percent in 1949, increased its Negro population to where by 1956 it was 45 percent Negro.

Q. Where was the Wyman attendance area located? A. Just east of City Park and approximately south of—I am sorry, just west of City Park and south of 23rd Avenue.

Q. Doctor, calling your attention to what's been marked for identification as Exhibit 333, would you identify [75] that exhibit for us, please? A. Yes, sir, these are copies of the School Board minutes of the night of June 20, 1956, a letter from Superintendent Oberholtzer.

Q. You will recall that Exhibit 332 was the boundary proposal. Was the boundary proposal as reflected in Exhibit 332 actually implemented or passed? A. Yes, it was.

Q. Does Exhibit 333 describe the boundary change as effected? A. No, it does not.

Q. And in what manner does it not? A. It is a letter from Superintendent Oberholtzer to the Board of Education, recommending that the boundary changes be enacted.

Q. Do you know, Doctor, whether or not they actually were inacted? A. Yes, they were.

Mr. Greiner: Your Honor, we at this time would offer Exhibit 333.

The Court: Do you have a copy of it?

Mr. Ris: Well, we saw two pages of it, I believe, and they would add a couple more. Do you have those pages, 14 and 15?

Mr. Greiner: Your Honor, there are two more pages [76] to be attached to this exhibit, and we

can add them. They will have to be added at the recess.

Mr. Ris: We have no objection if they are completed.

The Court: Very well, it will be received.

(Whereupon, Plaintiff's Exhibit 333 was received in evidence.)

Q. Dr. Klite, calling your attention to what has been marked for identification as Exhibit 204, being a boundary map showing the boundaries between Manual and East, could you identify Exhibit 204? A. Yes, Exhibit 204 shows the boundaries of Manual after the boundary change of 1956 that I quoted before with the small optional zone west of York remaining, in the area north of City Park between York and Colorado Boulevard remaining optional, the rest of the area west of York being ceded to Manual.

Mr. Greiner: Your Honor, we would offer 204 at this time.

Mr. Ris: No objection.

Mr. Brega: No objection.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 204 was received in evidence.)

The Court: What is No. 333? Does it carry out the proposals in 332?

[77] The Witness: Yes, sir, the boundary changes reflected in 333 are identical for the senior high schools to those in 332.

Q. Dr. Klite, referring again to Exhibit 210, which I believe you have in front of you, in 1956 what was the capacity utilization shown in Exhibit 210 for Manual High School? A. One hundred seven percent.

Q. And what was the capacity utilization for East High School? One hundred seven percent.

Q. Were there any empty seats at Manual in 1956? A. Slightly less than 500.

Q. Referring then to Exhibit 401, Doctor, what was the percentage Negro enrollment in 1956 at Manual? A. In 1956, Manual was 42 percent Negro.

Q. And what was the situation at East as to its Negro enrollment? A. It was 1 percent Negro.

Q. Referring to Exhibit 210, what was the capacity of new Manual when it opened in 1953? A. 1560.

Q. Was the capacity the same in 1956? A. As far as I know, yes.

Q. Is that capacity shown on Exhibit 210 or 401? A. It is shown on Exhibit 210.

[78] Q. Again, referring to Exhibit 401, does that exhibit depict for the year 1949 what percentage of all Negro senior high school students in Denver were enrolled in Manual? A. It shows the numbers. It shows that 275 of the city's 363 Negroes, or approximately 75 percent, were enrolled in Manual in 1949.

Q. By 1956, what percentage of Negro senior high school students were enrolled in Manual? A. It shows that 541 of the city's 641, or roughly 85 percent, were enrolled in Manual.

Q. Again referring to Exhibit 401, between 1949 and 1956, is the Negro enrollment at East depicted in Exhibit 401? A. Yes, it is.

Q. What does the exhibit show happening to the Negro

enrollment at East? A. East had 3 percent Negro students in 1949, decreased to 2 percent in 1950 and 1 percent in 1956.

Q. Referring then again to Exhibit 210, Doctor, when new Manual opened in 1953, what was its capacity? A. 1560.

Q. And what was its enrollment? A. 1,003.

Q. And referring to Exhibit 401, what was new Manual's racial composition when it opened? A. It was 35 percent—I am sorry, 35 percent Negro. [79] We do not know the Hispano population.

Q. In 1953 when new Manual opened, at East High School what was East's capacity? A. Approximately 2,430.

Q. And what was East's enrollment? A. 2,426.

Q. And again referring to Exhibit 210, what was the capacity utilization at East? A. 100 percent.

Q. What was its racial composition? A. It was 2 percent Negro. We do not know the Hispano population.

Q. Doctor, I would like to next call your attention to what's been marked for identification, what is in evidence as Exhibit 200. Was there any relationship, Doctor, between the attendance area for Manual and East High Schools and the attendance areas for Cole and Smiley Junior High Schools? A. In 1926?

Q. Yes. A. The Cole boundaries were identical to the Manual boundaries in 1926.

Q. How do you know that? A. It was stated in the Superintendent's circular.

Q. So then Exhibit 200 also depicts the attendance areas for Cole and Smiley Junior High Schools? [80] A. I think more fairly it depicts the attendance for Cole and Gove. Smiley opened in 1928.

Q. All right, referring then to Exhibit 336, can you identify Exhibit 336? A. Exhibit 336 is the racial ethnic data of the Denver Public Schools by school in school year 1946.

Q. What is the source of Exhibit 336? A. This was obtained from the Urban League of Colorado in their files.

The Court: This is for what year?

The Witness: 1946.

Mr. Greiner: Your Honor, the authenticity of Exhibit 336 has been stipulated to, and we would offer it at this time.

Mr. Ris: No objection.

Mr. Brega: No objection.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 336 was received in evidence.)

Q. Referring to Exhibit 336, Doctor, by 1946 what is reflected in that exhibit as to the racial composition of Cole Junior High School? A. Cole had 1663 students, of whom 1,717 were Anglo, 345 were Negro, 118 were listed as Mongolian, and 483 were listed as Spanish, Spanish-American and Mexican.

[81] Q. Is the percentage racial composition disclosed there? A. No, it is not.

Q. Can you determine approximately what percent Anglo Cole was in 1946? A. Approximately 40 percent.

Q. Then, Doctor, if you would refer to Exhibit 211, what does 211 purport to depict? A. This depicts the Cole and Smiley boundary lines in the areas where they intersect.

Q. For which year? A. For 1952.

Q. Doctor, what's the source of this boundary information depicted on Exhibit 211? A. Well, there are several corroborating sources. One is a newspaper map from the Rocky Mountain News in 1952. The others are maps obtained by the defendants, showing the junior high areas in 1952.

Q. And does Exhibit 211 accurately depict the boundaries shown in those sources? A. Yes, for the areas shown. It does not depict the entire boundaries of either Cole or Smiley, just the areas where they intersect.

Mr. Greiner: Your Honor, we offer Exhibit 211 at this time.

[82] Mr. Ris: No objection.

Mr. Brega: May I ask a question?

The Court: Surely.

Voir Dire Examination by Mr. Brega:

Q. Dr. Klite, on the western boundary with the hash mark on the western side of the optional area, are these estimates by you? A. The indication that this was an optional zone has been corroborated since my deposition by the 1936 Superintendent's reports, which depict this as the Columbine area, being optional between Cole and Smiley.

[83] Q. Do you find that your corroboration shows that the original areas you depicted are the correct demarcation lines? A. Yes, sir.

Mr. Brega: No objection.

The Court: 211 is received.

(Whereupon, Plaintiffs' Exhibit 211 was received in evidence.)

Direct Examinaion by Mr. Greiner (Continued):

Q. Referring, Doctor, to Exhibit 211, by 1952 where does the exhibit depict the eastern boundary of Cole Junior High School? A. It is at an identical location to that of

Manual, between the alleys of High and Race Streets from 34th to 28th and between Williams and High from 23rd to 28th.

Q. Does Exhibit 211 depict an optional zone between Cole and Smiley? A. Yes.

Q. Could you describe that optional zone, please? A. Yes, the area between the boundary I have just described and Colorado Boulevard is all optional.

Q. Next, Doctor, if you would refer to Exhibit 215 and 215-A. First, could you identify Exhibit 215? A. Exhibit 215 is a similar exhibit to 210. This time [84] listing for Cole, Smiley and Morey the average daily memberships from 1951 to 1963. Similar sources as were used for Exhibit 210.

Q. And referring to what has been marked for identification as Exhibit 215-A, what does 215-A purport to be? A. These are the percentage calculations based on 215.

Mr. Greiner: Your Honor, at this time we would offer Exhibits 215 and 215-A.

Mr. Ris: May I check them, please?

Mr. Creighton: There has been a change recently, Mr. Greiner, since we saw an earlier version.

Mr. Greiner: This has gone through several revisions.

Mr. Ris: If the Court please, we do object to this on the grounds of insufficient foundation. On the basis of the figures supplied to the plaintiffs by the defendants—

The Court: Are you referring to 215-A?

Mr. Ris: 215-A and 215. One is the numbers and the other is percentage, but for the same schools and the same period. And they are—they have from some

other source apparently arrived at some contrary figure. For example, one year for one school—there's a difference of—a difference from 74 to 86 percent. So, it is [85] substantial and we object on the grounds of insufficient foundation.

The Court: May I see those, please?

Which school are you referring to, Mr. Ris?

Mr. Ris: I'm going to ask Mr. Creighton to cover this. He has the details in mind.

Mr. Creighton: Your Honor, I believe you have the only copy of that particular version of it available, but, taking Cole for 1956, let's just say 1955, we will offer an exhibit—it will be Exhibit CC when it's offered—which will show that the capacity utilization at Cole that year was 90 percent—86 percent. That was based on a capacity of 1,770, which in turn was based upon a room count from files and sources made available to the plaintiffs. The membership that we used for our exhibit is consistently the end-of-September principal's report, which in turn is always used by the school district in any planning function.

And so we get for 1955 an 86-percent capacity utilization and we believe it to be based upon more proper sources. In 1956 our capacity would be 90 percent for Cole.

The Court: I will say this, that there is no guarantee that the plaintiffs' exhibits and the defendants' will be the same. I mean, they may reach different results. At the same time, I suppose the truth is of the type that—it's immutable. And, if you have the right sources, if you [86] convince me, why that's the thing. That will straighten this out. But, I don't

see any reason for rejecting that because you believe you are going to be able to prove one part of it is wrong.

Mr. Creighton: By way of foundation, I think the witness ought to at least put in the record the source for each year for his capacity figures, because—then the Court will be able to measure his source against the ones we're going to use.

The Court: I will surely look forward to having you cross-examine him thoroughly on that subject. We will receive these.

(Whereupon, Plaintiffs' Exhibits 215 and 215-A were received in evidence.)

By Mr. Greiner:

Q. Dr. Klite, referring to Exhibits 215 and 215-A, in 1951 as to Cole, what was the capacity? A. May I have the exhibits, please?

Q. Yes. I'm sorry.

The Court: 1951?

Mr. Greiner: Yes, Your Honor.

The Court: As shown by this?

Mr. Greiner: As shown by the exhibit.

The Witness: What was its capacity? Is that the question, Mr. Greiner?

[87] Q. Yes, in 1951. A. 1,908.

Q. And what was its enrollment in 1951 according to Exhibit 215? A. 1,338.

Q. And what was the capacity utilization then, referring to Exhibit 215-A, in 1951? A. 71 percent.

Q. Again referring to Exhibit 215 and 215-A, in 1951 is

the capacity for Smiley Junior High School depicted there? A. Yes, 890.

Q. And in 1951 what is the enrollment shown at Smiley? A. 1,224.

Q. What then is the capacity utilization, referring to Exhibit 215-A? A. 126 percent.

Q. In 1952, referring to Exhibit 396—

The Court: Are we going to go through each year here?

Mr. Greiner: No, Your Honor. We're leading up to some material concerning a boundary change which took place in 1952. This is before.

The Court: All right. Go ahead.

Q. Referring to Exhibit 396, Doctor, have you [88] identified that exhibit for us? A. Yes, this is the 1955 school building and site needs study for the East High area.

Mr. Greiner: Your Honor, the authenticity of 396 has been stipulated to by the original defendants. We would offer it at this time.

Mr. Ris: We have no objection.

Mr. Brega: No objection.

The Court: 396 will be received.

(Whereupon, Plaintiffs' Exhibit 396 was received in evidence.)

Q. With respect to Smiley Junior High School, Doctor, and referring to Exhibit 396, does that exhibit disclose any change in the capacity at Smiley in 1952? A. Yes, it shows that an addition was built in January of 1952 that added 556 seats to the school.

Q. Now, referring to Exhibit 215-C, at Cole Junior High School at that same time in 1952, were there any empty seats in Cole? A. Cole was 63 percent of capacity with a capacity of 1,908, and a membership of 1,208. There were 700 empty seats.

Q. In 1952, Doctor, at Cole Junior High School, there were then how many empty seats? A. In 1952?

[89] Q. Yes. A. 700.

Q. And in 1952 at Smiley what was the capacity according to Exhibit 215? A. What was the capacity?

Q. Yes? A. After the addition was built?

Q. Yes. A. 1,446.

Q. What was the enrollment? A. 1,367.

Q. And what then, according to Exhibit 215-A, was the capacity utilization at Smiley? A. 94 percent.

Q. Now, as shown by Exhibit 215-A, Doctor, between 1952 and 1956 what was the utilization first at Cole and then at Smiley? A. Cole remained undercapacity through that period. Smiley became filled and slightly overcapacity in 1954.

Q. Now, Doctor, do we have any information with respect to what was happening during this period to the racial compositions of Cole and Smiley? A. Yes, Exhibit 401.

Q. What does 401 show happening to the racial compositions?

[90] Pardon me. I think we'd better identify 401.

Mr. Greiner: 401 is in evidence.

A. Exhibit 401 shows that Cole, which was 25-percent Negro in 1950 was 40-percent Negro in 1956. Smiley, which was one-percent Negro in 1950 was five-percent Negro in 1956.

Q. Now, between 1952 and January of 1956 what, if any, changes were made in the Cole-Smiley attendance area?

The Court: Between what years?

Mr. Greiner: Between calendar year 1952 and prior to January of 1956.

A. The western tip of the Smiley-Cole boundary was apparently changed to Race Street, a change of one-half to one and a half blocks.

Q. Referring your attention, Doctor, to what's been marked as Plaintiffs' Exhibit 211-B, would you describe—identify 211-B for us? A. 211-B depicts two facts: one is this change in boundary that I have just mentioned, and a second is a—an approximate eastern border of the Negro population in 1950 obtained from Exhibit 211-A.

Q. Doctor, referring first to the apparent boundary change which you referred to, what is the source of the information concerning that boundary change? A. The source is the board minutes of January, 1956, Exhibit 332, I believe, which is in evidence.

[91] Q. Do you still have that exhibit in front of you, Doctor? A. Yes, I do.

Q. What does Exhibit 332 say with respect to this apparent boundary change? A. On Page 14, under 3, change from boundary line between Cole, Morey and Smiley, it says the present optional area between Cole and Smiley Junior High Schools from York Street to Race Street, 34th to 23rd, will become Cole district. (b) The present optional zone between Morey and Cole Junior High Schools, from York Street to Race Street, 21st to 23rd Avenues, will become Cole district.

Q. Referring next, Doctor, to what's been identified as Exhibit 211, purporting to be a boundary map, can you identify Exhibit 211? A. Yes, this is the 1952 Cole-Smiley boundary map.

Q. With respect to the 1950 census data, Doctor, which you have identified as being reflected in Exhibit 211-A—

The Court: May I see the minutes of the board?

The Witness: I do not have 211-A, Mr. Greiner.

Q. Dr. Klite, what is the source of the boundary depicted on the Exhibit 211? A. I believe I have already discussed that, Mr. Greiner.

Q. The source? [92] A. Yes, sir.

Q. Being the minutes? A. No. The source is the superintendent's circulars in 1936. That exhibit is in evidence.

Q. Now, with respect to—

Mr. Greiner: Well, first of all, Your Honor, we'd like to offer into evidence Exhibit 211-B.

The Court: What is it? The overlay?

Mr. Greiner: This is the overlay, Your Honor, which goes on Exhibit 211.

The Court: Do you object to this?

Mr. Creighton: Let's look at it. There have been some changes from time to time.

Mr. Ris: If the Court please, this seems inconsistent on its face. This purports to be a boundary change, 1953 to 1955, with the overlay. It pertains to "approximate eastern border of Negro population in 1950." Now, we're mixing apples and oranges here and I don't think it's proper to do this. So we're going to object for that purpose.

Q. Doctor, with respect to the racial composition data depicted on 211-B, what was the source of that data? A. That's Exhibit 211-A.

Q. Or 211-A. A. The source of 211-B for the racial and ethnic data [93] is 211-A.

Q. Which is, in turn, the source of what? A. The 1950 census.

The Court: 211 is in evidence now?

Mr. Greiner: Yes, Your Honor.

The Court: What is the net effect of all this change?

The Witness: The net effect?

The Court: Of this boundary change. In 1953—from 1953 to 1955?

The Witness: Well, the 1956 board minutes indicate that at that time the western border of the optional zone was Race Street. It's clear that in 1952 the western border was between Williams and High Street; the implication being that sometime in that period the small area between Williams and High and Race was ceded to Cole.

Mr. Greiner: Your Honor, 211-B also depicts what the racial composition of that neighborhood was at least in 1950.

The Court: Very well. We will receive it for whatever value it may have. And we will take a recess until two o'clock.

(Whereupon, Plaintiffs' Exhibit 211-B was received in evidence.)

* * * * * * *

[94] • • •

By Mr. Greiner:

Q. Dr. Klite, just before the noon recess, we were discussing Plaintiffs' Exhibit 211-B. One of the facts depicted on that exhibit concerns the census data from 1950, is that right? A. Yes.

Q. Referring to 211-B, what does 211-B show was the racial composition of the neighborhood which was ceded to Cole from that optional area? A. I don't have the exhibit before me, Mr. Greiner.

The Court: Here it is.

A. (Continuing) It shows that the area ceded to Cole falls at approximately the line of demarcation between the heavily Negro area and the transitional area indicated in Exhibit 211-B.

Q. What was the percentage of Negro population in that area? A. Well, we do not have a specific fix of the Negro population in the exact area of boundary change, but in general the population—

[95] Mr. Ris: Object now. The witness wasn't even a resident here at that time.

Mr. Greiner: We are talking about the census data, Your Honor, as depicted on Exhibit 211.

The Court: Well, how did he compute it? How did he arrive at this conclusion he is about to give us?

The Witness: Your Honor, if you overlay the census data on the map, one can see in which terms of Negro population the area of boundary change occurred.

The Court: Yes.

The Witness: And it shows that it occurred right at the border of the heavily Negro area.

Q. On the east side of what you have referred to as the border, can you tell from Exhibit 211-A what the Negro population was? A. Well, it shows that in 1950—

Q. Yes. A. —that the area ceded was partly in the 32 percent Negro enumeration district and partly in an area that's included among the greater than 50 percent, which as I recall happened to be 64 percent Negro.

Q. Referring your attention again to Exhibit 332, Dr. Klite, after the boundary change that took place sometime—

The Court: Now, where is this boundary that you are now describing?

[96] Mr. Greiner: It is on the western portion of the optional attendance area between Cole and Smiley.

The Court: What street would this be?

The Witness: Race Street on the eastern boundary, 23rd on the southern boundary, 34th Avenue to the north, and then an irregular area westward as far as the alley between Williams and High Street.

The Court: All right.

Q. Now, that boundary change occurred sometime between when? A. It appeared that it occurred sometime between 1953 and 1955.

Q. Now, subsequent to 1955, Dr. Klite, was there another boundary change proposed with respect to the Cole-Smiley attendance area? A. Yes, there was.

Q. Referring to Exhibit 332, would you please describe the change? A. Exhibit 332, which is a copy of the Board minutes—

The Court: Do you have that? I have got the original. You don't have a copy?

The Witness: No, I don't. Thank you.

A. (Continuing)—indicated that the present optional area between Cole and Smiley Junior High Schools from York to Race, 34th Avenue to 23rd, would become Cole District, and [97] that the present optional area between Morey and Cole from York to Race, 21st to 23rd, would become Cole.

Q. Now, Dr. Klite, referring your attention to Exhibit 212, can you identify Exhibit 212 for us? A. Yes, Exhibit 212 depicts what the boundaries would have been in 1955 prior to boundary change recommended in the Board minutes.

Q. And what is the source of the boundary lines depicted on Exhibit 212? A. Several sources, partly from the Board minutes, partly from newspaper maps, and partly from the defendants' exhibits dealing with the same subject.

Mr. Greiner: Your Honor, at this time we would offer Exhibit 212 into evidence.

The Court: Do the intervenors have a copy of this?

Mr. Brega: I can't seem to locate a 212, Your Honor.

The Court: Well, show them the original then.

Mr. Brega: Oh, I found it; thank you.

Mr. Creighton: Your Honor, the defendants object to this exhibit on the ground that an insufficient foundation has been made, specifically that this depiction of the optional area for Cole, Smiley, and Morey west of York depends upon an interpretation of the January proposal to the Board, which is inconsistent with the June action of the Board, both [98] of which is Exhibit 333.

In June, the Board canceled all of that optional area west of York with no mention of its eastern limit.

It is our position, Your Honor, that that block and a half sliver remained there throughout this period and that there was not a two-stage, piecemeal—

The Court: What block and a half sliver?

Mr. Creighton: Speaking of from the alley between I believe it is Williams and High, running up a ways north, and then shifting over to the alley between High and Race. Now, it varied from a half block to a block and a half.

It is our position that this does not accurately represent the situation in 1955 because that sliver remained.

The Court: Well, what does 332 show?

Mr. Creighton: Exhibit 332 is the proposal made to the Board in January, Your Honor.

The Court: And it was never adopted?

Mr. Creighton: It was not adopted. The actual Board action on this matter was taken in June, and it simply says all of that optional area west of Yok, which by I think equal inferential methods means that there was no change from 1936, as this

witness testified, down to 1956, when a somewhat different portion of the optional area was canceled.

Mr. Greiner: Well, Your Honor I think counsel has made my point for me. Exhibit 332 can support either of two [99] inferences, and what we are urging here is one inference, and I assume counsel will urge the opposite inference, either in cross-examination or in the presentation of their case. There is no better evidence than Exhibit 332 as to what the situation had been prior to the change which actually took place.

Mr. Creighton: Well, there is better evidence. There is the Board's action.

The Court: We have taken 332 in evidence already, haven't we?

Mr. Greiner: Yes, Your Honor.

The Court: And this is 212?

Mr. Greiner: What we're talking about now is 212, Your Honor, that's correct.

The Court: And for what purpose are you offering 212?

Mr. Greiner: 212 is offered, Your Honor, to show what the boundaries were in fact immediately prior to the change in 1956. 212 shows the boundaries in 1955.

The Court: Do you object to it for that limited purpose?

Mr. Creighton: The objection is that an insufficient foundation has been laid. These changes are made by Board action and Board action alone, and there is no showing that there was any Board action between 1952 and 1955. There would have to

be Board action to have made these piecemeal changes in the boundaries.

[100] Mr. Greiner: Your Honor, it seems to me what counsel is objecting to is 211-B rather than 212. 211-B is already in evidence.

The Court: True. Let me see it, would you please, Exhibit 212, I mean.

Well, I will withhold a ruling on it until it's clarified a little more. I don't know.

Mr. Brega: Your Honor, we offer an additional objection—

The Court: I am not going to receive it now.

By Mr. Greiner:

Q. Dr. Klite, have you prepared an exhibit which reflects the change which was actually implemented in June of 1956? A. Yes.

Q. And is that Exhibit 212-A? A. Yes, 212-A shows the difference in the boundaries between 212 and I believe 213.

Q. And what is the basis of 212-A?

The Court: Which exhibit is he identifying now?

Mr. Greiner: It's the overlay, Your Honor.

A. 212-A is an overlay which shows the area that was apparently ceded to Cole in 1956.

Q. And what is the basis of 212-A? A. Exhibit 332 and 333.

Q. And Exhibit 333 depicts the action actually taken by [101] the Board? A. That's correct.

Q. And does Exhibit 212-A accurately depict the change described in 337? A. It depicts the change described in 332.

Q. What is the difference in the change described in 332 and that actually enacted in 333? A. In defining the area to be ceded to Cole in Exhibit 332, the proposal in January—it was specifically stated that the western boundary was Race Street. In the final action, the western boundary is not indicated. It is just stated that the area west of York will be ceded.

Mr. Greiner: Well, Your Honor, we would again then offer Exhibits 212 and 212-A as depicting the boundary change that was actually made in 1956.

Mr. Creighton: Same objection, same basis.

The Court: Well, do you deny that Exhibit 333 does show the rest of the picture? It seems to me that there is a derivation here that may have some value from their standpoint.

Mr. Creighton: 333 is what the Board did. It was the minutes of the Board action.

The Court: All right. Then you can argue your inference and they can argue theirs. We will receive these. If you say it's a false conclusion, why, you're free to urge [102] it. But, I don't see why they can't offer it for the purpose for which they are arguing in any event.

So, we will receive it.

(Whereupon, Plaintiffs' Exhibits 212 and 212-A were received in evidence.)

Q. Dr. Klite, referring to Exhibit 212-A, would you please describe the changes as they were proposed pertain-

ing to Cole and Smiley? A. Yes, the area from 34th to 23rd, York to Race, which had been optional Cole-Smiley, would be ceded to Cole. The area 21st to 23rd, York to Race, which had been optional Morey-Cole, would be ceded to Cole.

Q. Now, would you refer to Exhibit 215, and in 1955, Doctor, first, as to Cole Junior High School, what was the capacity of Cole?

The Court: Haven't we had that before?

Mr. Greiner: No, Your Honor, I don't believe so.

A. 1955, capacity was 1908.

Q. And what was the enrollment at Cole? A. 1401.

Q. And what was the capacity utilization at Cole? A. 74 percent.

Q. Referring to Exhibit 401, what was the racial composition? A. Cole was 36 percent Negro. The Hispano percentage [103] is not known.

Q. Now as to Cole and Smiley in 1956, Doctor, after the change was implemented, as to Cole what was the capacity? Had it changed? A. I have no indication that it had.

Q. So referring to Exhibit 215, the capacity of Cole then was what? A. Still 1908.

Q. And what was the enrollment at Cole after the boundary change? A. 1540.

Q. And what was its capacity utilization? A. 81 percent.

Q. And what was its racial composition? A. It was 40 percent Negro.

Q. Did any empty seats remain at Cole after the boundary change in 1956? A. Yes, the difference between the capacity of 1908 and enrollment of 1540 is approximately 375 seats.

Q. Now with regard to the other school affected, Smiley Junior High School, in 1956 what was the capacity of Smiley? A. 1446.

Q. And what was its enrollment? A. 1479.

Q. And what was its capacity utilization then? [104] A. 102 percent.

Q. Doctor, referring to Exhibit 215, in 1958 was there another addition built at Smiley? A. Yes, there was.

Q. How many spaces were added?

The Court: What year is this now?

Mr. Greiner: 1958.

A. We have the addition of about 85 spaces.

Q. Now, at the time those spaces were added to Smiley, were there any empty spaces still available at Cole, referring to Exhibit 215? A. Yes.

Q. How many empty spaces? A. Approximately 250.

Q. Again referring to Exhibit 401, Doctor, in 1958, can you give us the Negro composition at Cole? A. I'm sorry, Mr. Greiner. Exhibit 401 does not list 1958 data.

Q. Do you have it for 1959? A. No, sir.

Q. So we don't know then what the racial composition was at Cole and Smiley in 1958? A. No, we do not.

Q. I'd like next, Doctor, to have you identify what's been marked in evidence as Plaintiff's Exhibit 402. [105] A. Exhibit 402 is a small blueprint copy of a 1951 elementary school boundary map of the district.

Q. And does Exhibit 402 depict the boundary lines for Columbine Elementary School in 1952? A. It depicts the boundaries after January 1952, yes.

Q. And what is the source of Exhibit 402? A. This was obtained from the defendant.

Mr. Greiner: Your Honor, I believe the authenticity of 402 has been stipulated and we would offer it into evidence at this time.

Mr. Ris: We have so stipulated, yes, sir.

Mr. Brega: No objection.

The Court: Very well, it will be received.

(Whereupon, Plaintiffs' Exhibit 402 was received in evidence.)

Q. Next, Dr. Klite, will you please refer to Exhibit 371. Can you identify Exhibit 371 for us? A. Yes, this is a copy of the official School Board minutes, January 16, 1952.

Mr. Greiner: Your Honor, we offer Exhibit 371 at this time.

Mr. Ris: No objection.

Mr. Brega: No objection.

The Court: It will be received.

[106] (Whereupon, Plaintiffs' Exhibit 371 was received in evidence.)

The Court: This is 1952, January?

The Witness: 1952.

Q. Referring to Exhibit 371, Doctor, does that exhibit purport to show the establishment of optional attendance areas around Columbine? A. Yes, it does.

Q. Will you please describe those optional attendance areas? A. The Board minutes state that "In order to eliminate eight double sessions and alleviate crowded conditions at Columbine, the principals of Columbine, Harrington, and Stedman recommended the following boundary changes: Creation of an optional zone between Columbine

and Stedman, between East 26th and East 32nd, between Colorado Boulevard and Steele, and an estimate then of the 100 boys and girls to be transferred to Stedman by use of this option."

Q. Those were to come out of the optional area? A. Yes.

"2. That an optional district be established between Columbine and Harrington and then a description of the boundary between that optional zone," which is also depicted on Exhibit 402, the map. It is an area bordering both schools. And then the statement: "It is felt approximately [107] forty-five children will be transferred to Harrington by use of this option." Then a summary of the effect of the boundary changes that will "1. Eliminate eight double sessions from Columbine, changing the membership from 660 to 500. 2. Harrington School will absorb approximately 40 boys and girls resulting in school membership of 509. 3. Stedman School will absorb approximately 100 boys and girls from Columbine, resulting in a school membership of approximately 700. Stedman School will thus be filled to capacity with no double sessions."

And then a statement that the Board passed the motion.

Q. Now, referring to Exhibit 406, Doctor, is 406—what is the source of 406? Can you identify it for us? A. Yes, Exhibit 406 shows the capacity utilization and the Negro percent enrollment at Columbine, Harrington and Stedman, through the years 1949 through 1953. They were taken from the principal's reports, the same data from which Exhibit 401 was taken. The capacity data was based on the membership data in those exhibits.

Q. In the principal's reports? A. Yes.

Q. What are the principal's reports again that you have reference to? A. These are ledger sheets of each school

recorded the [108] first semester and second semester listing the membership and attendance at the school, the Negro percent, white percent, foreign-born white percent, Oriental percent that were calculated up until 1956.

Mr. Greiner: Your Honor, we offer Exhibit 406.

Mr. Creighton: I believe there is a last-minute change in that exhibit. May we look at it?

Mr. Greiner: Certainly.

Mr. Ris: May I voir dire for a moment?

The Court: You may.

Voir Dire Examination by Mr. Ris:

Q. Dr. Klite, with regard to Harrington School, prior to 1950, isn't it true that the capacity of that school was 240 and not 300? A. The 300 figure is based on the following calculation, Mr. Ris. The 1955 site study which I believe is in evidence for the East High area, Exhibit 396, shows an addition to Harrington in 1950 of 150 spaces. In addition, Superintendent Oberholtzer's notes of 1952 show at that time a capacity of Harrington of 450. Simple subtraction then would indicate that the capacity of Harrington was 300 prior to the addition.

Q. I understood you got your capacities directly from the principal's reports for each of these years? [109] A. No, the capacities are not listed on the principal's reports.

Q. Well, then, you have arrived at the 300 capacity rather than 240 for 1949 and '50 by comparing later documents and doing mathematical comparisons? A. Yes, that's correct.

Mr. Ris: If the Court please, we object to this on the ground of incompleteness and inaccuracy, lack of foundation.

The Court: Would you say that these figures are just guesses?

The Witness: If I might say something, there are several figures published each year for enrollment, membership, capacity. These vary on the basis of a lot of different formulas, and one can find examples of many different schools or the same school in a given year. I think this is the source of a lot of differences in figures we have had. This is, I think, a reasonable calculation based on the site study need, which shows the size of the addition to Harrington in 1950 of 150 pupils and Superintendent Oberholtzer's notes which I believe is also numbered as an exhibit which show that the capacity in 1952 was 450. Therefore, a guess would be that the capacity prior to that addition was 300.

[110] *Direct Examination by Mr. Greiner* (Continued):

Q. What year was the addition constructed? A. 1950.

Q. Was there any indication of the publications of the School District that there was a further addition after 1950, before 1952? A. Not to my knowledge.

The Court: This capacity utilization figure, this is the same figure?

The Witness: That is correct, the same tables from which the racial and ethnic data were obtained also list the average membership at that time. That over the capacity of the building is the percent capacity.

The Court: Do you have reason to believe these are inaccurate projections or estimates?

Mr. Bis: Yes, we have every reason to believe that the first two for those first two years are in-

accurate. May I ask another thing here? Referring to Plaintiffs' Exhibit 24—

The Court: Is there any other source of information that will give you the exact figures?

Mr. Ris: Well, what I am referring to here are some additional construction dates in one of their exhibits that I would just like to ask about.

[111] The Court: All right. I mean, do you have the source of information that would furnish these answers?

Mr. Ris: Yes, our own figures from the defendants' records are that it was 240 until 1952.

Mr. Greiner: I think the problem is there is a discrepancy. We are all working with the defendants' records and they say two different things.

The Court: Are yours projections also?

Mr. Creighton: Your Honor, we have had this exhibit in its present form for several days and we have checked it carefully—

The Court: That isn't what I asked you. Are yours projections also? These particular figures apparently were not kept contemporaneously, so you have had to reconstruct them, too.

Mr. Creighton: We go back to the room counts made year by year.

The Court: You have had to reconstruct them also?

Mr. Creighton: Yes.

The Court: All right, well, we will take this and we will take yours also.

Mr. Creighton: Fair enough.

(Exhibit 406 was received in evidence.)

[112] Q. Dr. Klite, referring to Exhibit 406, in the year 1951, what does 406 state as to Columbine Elementary School, its capacity utilization? A. Columbine was at 114 percent capacity.

Q. What was its percent Negro composition? A. Twenty-four.

Q. And as I recall the board minutes indicated that it was on double sessions? A. Yes, they did.

Q. Now, referring to Harrington Elementary School, one of the other schools affected by the establishment of the optional zones, in 1951 what was its capacity utilization? A. 104 percent.

Q. And what was its percent Negro? A. Zero.

Q. And was it on double sessions according to the minutes? A. The minutes made no record that it was.

Q. Now, again, in 1951, prior to the establishment of the optional zones, what was the capacity utilization at Stedman, according to Exhibit 406? A. 95 percent.

Q. What was its percent Negro composition? A. Zero.

Q. Do the minutes indicate it was on double sessions? [113] A. There is no indication.

Q. Now, Stedman was to receive approximately 100 students under this change? A. That was the estimate in the board minutes.

Q. Now, again referring to Exhibit 406, after the optional zones were put into effect, what was the capacity utilization at Stedman? A. It was 116 percent capacity.

Q. How many students did Stedman actually receive? A. Approximately 120.

Q. Did the board minutes, Exhibit 371, indicate whether or not Stedman could absorb a given number of students without going on double sessions? A. I believe, as I read

it, the statement was that 100 students would fill Stedman to capacity with no double sessions.

Q. All right, and they got 20 more than they counted on? A. That's correct.

Q. Do we know whether or not that caused Stedman to go on double sessions? A. No, we don't.

Q. Now, what was the percent Negro at Stedman after the receipt of these additional 120 students? A. Zero.

Q. And what had it been prior to the change? A. Also zero.

[114] Q. And at Harrington, what happened to the capacity utilization at Harrington after the boundary change? A. It was at 120 percent capacity.

Q. And it had been what? A. 104.

Q. What happened at Columbine? A. It went from 114 prior to the boundary change to 109 the year after.

Q. Do you know whether or not the double sessions were in fact eliminated at Columbine? A. No, I do not know.

Q. Now, after the implementation of these optional zones, Doctor, what was the percentage enrollment of Negroes at Columbine? A. Thirty-one percent in 1952.

Q. And what had it been just prior to the change? A. Twenty-four percent.

Q. And did you give us the figures for Harrington before and after the change? A. No, Harrington remained zero percent Negro after the change.

Q. So that neither Stedman or Harrington then received any Negroes from these optional zones? A. There was one Negro enrolled at Harrington in 1952.

Q. Whereas there had been none prior? [115] A. Correct.

Q. Doctor, I would like to call your attention to Exhibit 408, which purports to be a boundary map. Can you identify

that for us? A. Yes, this is the northwest section of Denver, the elementary school boundaries in 1961, specifically outlining the Brown, Boulevard and Ashland Schools.

Q. What was the source of Exhibit 408? A. This is the official 1961 boundary map with the changes, with the embellishments described.

Q. The embellishments simply being the outlining of attachments? A. That's right.

Mr. Greiner: At this time, Your Honor, we would offer Exhibit 408.

The Court: Any objection to 408?

Mr. Ris: No, sir.

Mr. Brega: No objection.

The Court: It will be received.

Mr. Greiner: Thank you.

(Plaintiffs' Exhibit No. 408 was received in evidence.)

Q. Initially, Dr. Klite, I would like to call your attention to Exhibit 404. Please identify 404. A. Exhibit 404 lists for Boulevard, Brown and Ashland [116] in the 1961 school year and the 1962 school year the Anglo and Hispano number and percent enrollment, the total enrollment and the capacity of those schools.

Q. And what is the source of that data? A. The source of the racial and ethnic data are the 1961 and 1962 school-by-school breakdown provided us by the defendants. The total enrollments are also obtained from the same sheets and the capacity data is from the 1962 planning report.

Mr. Greiner: Your Honor, we will offer Exhibit 404.

Paul D. Klite—for Plaintiffs—Voir Dire

The Court: Do you object?

Mr. Ris: May I voir dire briefly?

The Court: Very well.

Voir Dire Examination by Mr. Ris:

Q. Your capacity data, Doctor Klite, you relied on the '62 planning report, right? A. Yes.

Q. But you don't use the racial enrollment shown in that report? You use some other figures? A. There is no racial enrollment shown in that figure.

Q. Does it show any figures at all? A. Yes, it does.

Q. Did you use those figures? A. No.

[117] Q. So, you used the report for one purpose and not the other? A. That's correct.

Q. Where did you get the other figures? A. The figures for enrollment were taken from the same sheets as the ethnic and racial data.

Q. Where did you get those? A. Obtained from you.

Q. What source? A. I think they are marked as exhibits. They are May 1962, I think.

Q. I am not being facetious— A. Right, these are the racial and ethnic composition by school for 1961 and 1962.

Mr. Greiner: He has reference to 398 and 399.

Mr. Ris: May we check those for a minute?

The Court: These are the principal's estimates?

The Witness: No, sir, these are—these are published—

The Court: They didn't count them in those days?

Mr. Greiner: They started counting again, Your Honor.

Mr. Ris: Now, just a minute, we don't know that they counted. These were estimates, all of these

principal's things. There has never been a census per se and counsel is volunteering [118] that. I don't think it is evidence.

The Court: Well, I think the administration itself indicated that these are pretty accurate counts, these informal counts of the principals, at the other hearing. That was the testimony.

Mr. Greiner: Your Honor, I might add that the authencity of 398 and 399 have been stipulated.

Mr. Ris: We granted the authenticity of 405, too. We only object to them taking figures that prove their point from one document and other figures from another document, instead of taking them all from the same document.

The Court: That's a familiar process in the law.

Mr. Ris: Well, I know it is.

The Court: You take depositions of parties by adverse parties and they take a portion of it as an admission. The rest of it they leave it to the other side to introduce. It is self-serving data. They are not bound by it. That's the advantage of being an adverse party. You don't have to take the works, you know. As I say, it is very familiar. It is everyday practice. You do it all the time.

Mr. Ris: I want to make a record, though, is all, as to what he has done and the reason for it, that's all.

The Court: All right, we will note your objection, but I don't see any reason why they can't use this source for one purpose and perhaps use another source, unless you think— [119] unless the other source is wholly untrustworthy. Are there differences in the numbers there?

Mr. Ris: They run as much as about 7 percent.

The Court: Very well, you can point those out. We will have that in evidence, 404.

(Plaintiff's Exhibit No. 404 was received in evidence.)

Direct Examination by Mr. Greiner (Continued):

Q. With reference to Exhibit 404, Dr. Klite, in 1961, what does it show being the racial composition for Boulevard Elementary School? A. Boulevard is 59 percent Anglo, 40 percent Hispano.

Q. And what was its capacity utilization in 1961? A. Eighty-five percent.

Q. Now, with respect to Brown Elementary School, what was its racial composition in 1961? A. It was 98 percent Anglo, 1 percent Hispano.

[1120] Q. What was its capacity utilization? A. 95 percent.

Q. And with respect to Ashland Elementary School in 1961, what was its racial composition according to 404? A. 61 percent Anglo, 37 percent Hispano.

Q. And what was its capacity utilization? A. 99 percent.

Q. Were any of these three schools then at overcapacity in 1961? A. No.

Q. Now referring to Plaintiffs' Exhibit 20, Dr. Klite, which is in evidence from the preliminary injunction hearing, there is census tract data, is there not, set forth in the map in the back of Exhibit 20? A. Yes.

Q. Would you find that, please, and identify the map that you're speaking from? A. The Map Number 4 in the appendix identifies the Spanish surnamed population on the basis of 1960 census tracts.

Q. What does it show as to the Spanish surnamed population in this area? A. You mean the area of Ashland, Boulevard and Brown?

Q. Yes, sir. A. It shows that census tract 6 falls roughly within [121] the Boulevard Elementary area and it is ten to twenty-five percent Hispano.

Q. What about Census Tract 4B? A. That is very roughly within the Ashland area and that is also the same percentage Hispano.

Q. What about Census Tract 5? A. That's very roughly within the Brown Elementary area and that is 0.1 to ten percent Hispano.

Q. Now, was there an administration proposal to effect a change in the attendance areas of Brown, Boulevard and Ashland? A. Yes.

Q. Referring to Exhibit 405, would you identify 405 for us, please? A. 405 is the 1962 study on pupil populations, school boundaries, pupil transportation and school building.

Mr. Greiner: Your Honor, the authenticity of 405 has been stipulated and we would offer it in evidence at this time.

Mr. Ris: No objection.

Mr. Brega: No objection.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 405 was received in evidence.)

Q. Can you find in Exhibit 405, Doctor, a reference [122] to the proposed change at Brown, Boulevard and Ashland? A. This exhibit on Page 7 of the elementary school section indicates proposed building change at Boulevard to close and demolish the north section of the school. It does not specifically list the boundary changes.

Paul D. Klite—for Plaintiffs—Voir Dire

Q. And what was the effect of the razing of a portion of Boulevard to be upon its capacity? Is this reflected in 405? A. Yes, it is shown that the adjusted building capacity will be 375, a decrease of 240 spaces.

Q. Now, were there also boundary changes proposed with respect to adjustments in the boundaries for those three schools? A. Yes.

Q. Where do they appear? A. Well, they appear in two sources that would be quoted: one is Plaintiffs' Exhibit 52 and the other is 62, official boundary map of the Denver Public Schools, which shows the area of change.

Q. Now, have you prepared an exhibit, Doctor, which reflects the boundary changes? A. Yes, I prepared an Exhibit 408-A which shows the areas taken from and ceded to Boulevard School.

The Court: What's the number of this, now?
The Witness: 408-A.

[123] Q. What's the source of that data? A. It is a comparison of the 1962 and 1961 official school boundary maps.

Mr. Greiner: Your Honor, we would offer 408-A at this time. That's the overlay.
Mr. Ris: May I voir dire, please?
The Court: Yes.

Voir Dire Examination by Mr. Ris:

Q. Dr. Klite, this 1962 change was a change involving all three schools, Ashland, Boulevard and Brown, was it not? A. That's right.

Q. And you merely show the portion pertaining to Boulevard and Brown? A. That is correct.

Mr. Ris: No objection to what it shows. It just doesn't show the whole picture.

The Court: 408-A will be received.

(Whereupon, Plaintiffs' Exhibit 408-A was received in evidence.)

Direct Examination by Mr. Greiner (Continued):

Q. Would you describe, please, Dr. Klite, from Exhibit 408-A the areas affecting Brown and Boulevard and Ashland Schools as depicted on the exhibit? [124] A. A one-block wide area on the western edge of Boulevard and approximately a three-block-wide area on the northern area were ceded to Brown. A triangular-shaped area between the Valley Highway and the Platte River that had been in the Ashland area was ceded to Boulevard.

Q. Now, as to the capacity at Boulevard, what was the effect of razing a portion of the school? A. The capacity for the school was lowered by 240 students.

Q. And what was the capacity utilization at Boulevard at that point? A. In 1962?

Q. Yes. A. There were 387 students or 103-percent capacity.

Q. Now, again, after the boundary changes which we have reference to, what was the capacity utilization of Brown? A. It also was 103-percent capacity.

Q. And what was it at Ashland? A. 91 percent.

Q. Now, with reference to the racial composition, what was the racial composition at Brown before and after the change? A. Brown was 98-percent Anglo in 1961 and 88-percent Anglo in 1962.

[125] Q. And what was the racial composition at Ashland before and after the change? A. It did not significantly change.

Q. It remained approximately what? A. 60 percent.

Q. And what was the racial composition then of Boulevard before and after the change? A. It went from a 59-percent Anglo school in 1961 to a 39-percent Anglo school in 1962.

Mr. Greiner: Pardon us for a moment, Your Honor. We have a new series of exhibits.

The Court: Wouldn't it be well to submit all of the proposed exhibits to counsel so that they can read them ahead of time?

Mr. Greiner: Oh, we have, Your Honor. They have had them for weeks. I just want to get these out of the way.

The Court: These are all marked?

Mr. Greiner: Yes.

Q. Dr. Klite, next I'd like to call your attention to what's been marked for identification as Plaintiffs' Exhibit 34, which is in evidence from the preliminary injunction hearing. That's the Policy 1226A. A. Yes, it is.

Q. Having to do with the assignment and transfer of [126] pupils? A. Correct.

Q. In 1226A the—does it define the administration policy of limited open enrollment? A. Yes, it does.

Q. Is there any integration requirement or condition stated in 1226-A, the limited open enrollment policy? A. No, there is not.

Q. Next, Doctor, I'd like to call your attention to Exhibit 99. Can you identify 99, please? A. Yes, Exhibit 99 is from the Division of Personnel Services of the Denver Public Schools and shows the school transfer data for the limited open enrollment, LOE, policy as of September 16,

1966. It lists the receiving schools and the number of transfers from the sending schools.

Mr. Greiner: Your Honor, I believe 99 is in evidence from the summer hearing, but in any event, if it's not, we would offer it at this time.

Mr. Creighton: It has been received, Your Honor.

The Court: Very well.

Q. Doctor, next I'd like to call your attention to Exhibit 100, which was put in evidence at the summer hearing. Would you please tell us what Exhibit 100 depicts? A. Yes, also for the limited open enrollment policy on September 16, 1966, it shows the ethnic groups of each [127] of the students who transferred.

Q. Was this by receiving school? A. Yes.

Q. Doctor, have you prepared an exhibit which is an interpolation of the data received in the exhibits—and the data depicted in Exhibit 99 and Exhibit 100 which purports to show the integrating effects or the nonintegrating effects of transfers under LOE in September, 1966, school year? A. Yes, I have. Exhibit 359.

Q. Would you explain, please, how 359 was constructed? A. Yes. From Exhibit 99, for example, it shows that Swansea received one child from Stedman; Exhibit 100 shows that Swansea received one Negro child. Obviously, the child that had transferred from Stedman to Swansea was Negro. For other schools that received multiple students from multiple schools, one can establish a range of transfers. For example, Stevens School received two children from Columbine, three children from Ebert, one from Montclair, one from Stedman, and four from Teller. Of these eleven students, then, six transfers from schools less than 50-percent Anglo in 1966 and five from schools more

than 50-percent Anglo. Exhibit 100 shows that of the eleven students who transferred to Stevens, ten were Anglo, one was Negro. To construct, then, the maximal and minimal integrating effect [128] of those transfers, on Table 1 of Exhibit 359, it is assumed that the one Negro who transferred to Stevens was integrated by this process, that is, he transferred from a minority school to an Anglo school. And that leaves then five places from Anglo schools that Anglos would have transferred from and, finally then, five Anglos would have transferred from minority schools.

Q. Those would have been non-integrating transfers? A. Yes, those would have been.

Now, assuming in Table 2 of the least possible integration, one would assume that the most possible Anglo students transferred from minority schools; in other words, six. And that would leave four who then transferred from one Anglo school to another Anglo school. And you would assume that the Negro child had already been integrated. So, using these figures in Exhibit 99 and 100, one can establish the range of transfers by racial and ethnic data, sometimes with pinpoint clarity and other times estimates.

Mr. Greiner: Your Honor, we offer Exhibit 359 at this time.

Mr. Jackson: May I voir dire, Your Honor?

The Court: Yes.

Voir Dire Examination by Mr. Jackson:

Q. Dr. Klite, on Exhibit 359 you have a heading, [129] "Anglo Schools" and "Minority Schools." Would you tell us what those mean? A. Yes, these were 1966 data. The school that was over 50-percent Anglo in 1966 was considered an Anglo school. A school that was less than 50-percent Anglo was considered a minority school.

Q. And that is the sole determining factor as to whether you would call it an Anglo school or a minority school? A. For the purpose of this exhibit, yes.

Q. In terms of minority transfers, did you treat the Hispano and Negro children the same? A. Yes.

Q. You made no distinction between a Hispano child transferring into a school that had less than 50-percent Anglo as opposed to a Negro child transferring into the same kind of school? A. That's correct. There are eight columns on this chart when you consider only two groups. To consider three groups would have caused too many columns to make it meaningful.

Q. And you don't, as I believe you have testified, have any figures as to the exact racial composition of these transfers, in some cases where there was only a single child transferring, you felt you could determine the racial or [130] ethnic composition, but otherwise it was guesswork and you were making estimates? A. A range of estimates, that's correct.

Mr. Jackson: We object, Your Honor, on lack of foundation and also as to the classification admittedly utilized by the witness for which there is no other foundation.

(Whereupon, Plaintiffs' Exhibit 359 was received in evidence.)

Direct Examination by Mr. Greiner (Continued):

Q. Dr. Klite, referring then to Exhibit 359, can you tell us what the range of Anglo transfers from minority schools to Anglo schools was as depicted in Table 1 and Table 2 of that exhibit? A. Yes, between 58 and 77 Anglo elemen-

tary students transferred from a minority school to an Anglo school.

Q. Between 58 and 77 out of a total of how many Anglo transfers? A. Approximately 125.

Q. How many Anglos transferred to minority schools? What is the range? A. The range is from 1 to 2.

[131] Q. Out of, again, 128 Anglos? A. Yes, 127, I believe.

Q. Out of 149 minority transfers, depicted on the exhibit, what was the range of transfers to Anglo schools by minority students? A. 14 to 27.

Q. And that is approximately what percent? A. Ten to 20 percent.

Q. And with respect to transfers of minority students to minority schools under limited open enrollment that school year, what is the range of the number of such transfers? A. Minority students transferring from one minority school to another?

Q. Yes, sir. A. About 70 percent of the students, 110 or 111.

Q. Now, what does Exhibit 359 show for the total participation at the elementary level in this limited open enrollment that year? A. I think those figures show better on Exhibit 99 and 100. It would show that there were a total of 267 elementary participants in the limited open enrollment policy.

Q. Approximately how many elementary school students were in the district at that time? A. Approximately 50,000.

[132] Q. Now, considering, Doctor, the range of the integrating transfers which you have described, on the basis of Exhibit 359, what is the maximum number of students who participated in an integrating transfer either Anglo or minority students under LOE that year? A. 29.

Q. Next, Doctor, I'd like to call your attention to what's been marked as Exhibit 87. Will you identify that for us, please? A. Yes, that is a document from the office of the Assistant Superintendent for Personnel Services, Denver Public Schools, and it lists the eligible open enrollment elementary schools, junior high schools, and senior high schools for the school year, 1968.

Mr. Greiner: Your Honor, Exhibit 87—the authenticity of Exhibit 87 has been stipulated to by counsel. And we would offer it into evidence at this time.

[133] Mr. Ris: We did so stipulate.

The Court: Very well, it will be received.

Mr. Brega: No objection.

(Plaintiffs' Exhibit No. 87 was received in evidence.)

By Mr. Greiner:

Q. Directing your attention then to Exhibit 87, Doctor, how was this report by the school organized? A. The eligible open enrollment spaces for the elementary schools are organized by high school area. They show that there were no spaces in the Abraham Lincoln area. They show that there were no spaces in the John F. Kennedy area. There were 10 spaces in the George Washington area. There were no spaces in the Thomas Jefferson area.

Q. Now, is that at all levels or is that only at the elementary levels? A. That's elementary.

Q. Now, where does Exhibit 87 show that there were spaces at the elementary level that year? A. There were spaces in four elementary schools in the East High area, four elementary schools in the Manual area, five elementary

schools in the North area and three elementary schools in the West area.

Q. Now, at the elementary school level, what were the total number of spaces open for limited open enrollment that year? [134] A. 365.

Q. And what was the total number of openings at the junior high school level? A. 635.

Q. And do you have a figure there for the senior high school? A. 120.

Q. What was the total number of openings then that were available for limited open enrollment in September of '68? A. 1120.

Q. Next, I would like to call your attention to Exhibit 89, Doctor, which is in evidence from the summer hearing. Just for reference, could you identify it for us? A. Exhibit 89 is a list of ten schools who have several things in common.

Q. What are these common characteristics? A. They have no limited open enrollment openings announced. They were under capacity. They were predominantly Anglo and they were receiving students by bus.

Q. Now, this is at what point in time, Doctor? A. September 1968.

Q. Does the Exhibit 89 show how many children were being bussed into these ten schools? A. Yes.

Q. Could you give us those figures, please? [135] A. 1,071 Anglos, 121 Negroes.

Q. Does Exhibit 89 reflect the total amount by which these schools were under capacity? A. 482 spaces.

Q. And how many spaces did they announce were available for limited open enrollment? A. Zero.

Q. And what was the average Anglo enrollment at these schools? A. 93 percent.

Paul D. Klite—for Plaintiffs—Direct

Q. Now, calling your attention, Doctor, to Exhibit 90, which is also in evidence from the summer hearing, what does Exhibit 90 depict? A. Exhibit 90 lists seven elementary schools who have also certain things in common. Number one, they have limited open enrollment spaces. Number two, they were for the most part under capacity. Number three, they were predominantly minority enrollment and Number four, they were not receiving children on the bus.

Q. Now, what does Exhibit 90 show the schools to be under capacity by, what total number of spaces? A. 270.

Q. And how many limited open enrollment openings were announced for those schools? A. 203.

[136] Q. And how many—what was the total number of limited open enrollment openings at the elementary level for the whole district? A. I believe I testified 365.

Q. So, 203 of the 365 openings were in the schools depicted on Exhibit 90? A. Yes.

Q. What was the average Anglo enrollment at those minority schools? A. Twelve percent.

Q. Could you list those for us, please? A. Crawford, Ebert, Gilpin, Wyatt, Harrington, Smedley, Elmwood.

Q. Dr. Klite, I would like now to ask you a series of questions regarding achievement in the Denver Public Schools. Would you first refer, please, to Exhibit 82, and would you identify the exhibit for us, please? A. This is a 1968 study entitled, "The Denver Public Schools Look at Themselves," from the Division of Instructional Services.

Mr. Greiner: Your Honor, the authenticity of the exhibit has been stipulated by counsel and we would offer it in evidence at this time.

[137] Mr. Ris: It is so stipulated.

The Court: It will be received.

(Exhibit No. 82 was received in evidence.)

Q. Dr. Klite, Exhibit 82 is a report of what? A. The results of the city-wide testing, achievement tests, in 1968.

Q. Now, how were those tests reported, test results reported?

Mr. Ris: If the Court please, I am going to continue to object. All he has been doing is reciting from these exhibits. They either speak for themselves or else this witness has no expertise on them at all. It is just going on and on, his own discussion concerning these. Either they are in and in for all purposes—

The Court: Well, I suppose he could read them and interpolate some.

Mr. Greiner: Your Honor, the purpose—

The Court: Do they really show the conclusions to be drawn from them from the mere reading?

Mr. Ris: Well, either they do or this witness is not qualified as an expert to interpret them, that's the point.

The Court: Well, he has studied them, at least, and I suppose counsel could do it in argument, you know.

Mr. Ris: Well, that's—

[138] The Court: We often do this, I think. We receive the exhibit, but we let—particularly, if it is a narrative report, we permit comment on some portions of it.

Mr. Ris: I am sure that's true with respect to the person that prepared it, but here is something this man never even prepared.

Mr. Greiner: Your Honor—

The Court: I don't know if it would be any better

if he had summarized his old testimony as an expert. Undoubtedly, he could have.

Mr. Ris: He is not an expert.

The Court: Put in a summary report.

Mr. Ris: He was a doctor of medicine, not a mathematician or statistician or anything.

Mr. Greiner: Your Honor, if I might speak to the objection, the purpose of a series of questions, this being the first of which, is simply to familiarize the Court with the methods used, the terminology used, in these reports, and what the witness is going to testify to are the meanings of such terms as median, the first quartile, the third quartile, and so forth. These all appear in the exhibit.

The Court: Well, is he peculiarly well fitted to study these achievement tests and reach these conclusions? What is his background?

Mr. Greiner: We are not asking him to reach any [139] conclusions with regard to these test results, merely to state what these exhibits show.

Now, these exhibits are hundreds of pages long and we thought that it might be more convenient if we could simply highlight certain facets of what these reports, which are prepared by the District itself, state and how they state it. We are not in an area of expert testimony.

The Court: Well, it is quasi-expert, I would say.

Mr. Ris: If the Court please, may I answer the Court's question as to this man's background? He is a doctor of medicine and expert in virusology and playing the cello, not in mathematics or statistics.

Mr. Greiner: May I ask a preliminary question of the witness, Your Honor?

The Court: Well, we might inquire as to the extent of his study of this.

Q. Dr. Klite, in the course of preparing for your testimony here for the trial, have you studied the reports of the Denver Public Schools on the achievement test results as published by the school system? A. Yes, I have.

Q. And have you studied those reports from the standpoint of familiarizing yourself with the terminology used in those reports, for example? A. Yes.

[140] Q. Now, with respect to the terminology used in Exhibit 82, could you tell us, please, the terms used to describe the means of reporting the achievement test results? For example, are the achievement tests results reported as a median score?

* * * * *

[144] * * *

By Mr. Greiner:

Q. Dr. Klite, again referring to Exhibit 82, does that exhibit report achievement test results? A. Yes, it does.

Q. Now, what are the methods used for reporting of those results? Is there, for example, a median test score reported? A. Yes, the school district has published every three years the results of their city-wide testing in quite similar form.

[145] Q. That's the triennial testing program? A. Yes, the results are reported both citywide and by school, showing the results of the test of each individual achievement test given, for example, spelling or language, and marking the four quarters of achievement. That is, the point up to which 25 percent of the children achieve is called Q-1.

Q. That's the first quartile? A. That's right. From that point to the point at which half the children have scored, that next point is called the median. Proceeding upward to the point at which 75 percent of the children are performing is Q-3, and then there is the upper 25 percent. These are reported in two forms consistently. One is a tabular form listing the Q-1, median, Q-3, et cetera, for each test, and the other is a bar graph, which depicts these three values and also shows the range of expectancy of achievement for the group tested. There are two ways of showing this data, the bar graph, either on the basis of grade level—that is, in the third month of the third year, one would expect or one would be at grade 3.3—or in a percentile basis, in which these quartiles are based on national ranging of students and schools.

Q. You mentioned the question of expectancy, Doctor. Do you know how these expectancies are determined? A. Yes, according to page 17 of Exhibit 82, the red [146] expectancy background, I am quoting from the chart, was determined by the inner quartile distribution of IQ scores of over 472 students tested in the 1968 survey.

Q. Exhibit 82 predicts the test results on a citywide basis? A. That is correct.

Q. There is no individual school data predicted in Exhibit 82 by school? A. No.

Q. Next, Dr. Klite, referring to Exhibit 372, tell us please what 372 depicts? A. Yes, for the 1968 achievement testing, the average of the nine tests administered to the fifth grade students at each school have been constructed. Those schools whose average median achievement was below the 20th percentile have been plotted on a map of School District No. 1. There are eleven schools indicated on the map.

Mr. Greiner: Your Honor, the authenticity of Exhibit 372 has been stipulated to and we would offer it into evidence at this time.

Mr. Ris: That's correct, 372 to 375 inclusive.

The Court: Very well, it will be received.

(Plaintiffs' Exhibit No. 372 was received in evidence.)

[147] Q. Dr. Klite, you said that these were schools achieving below the 20th percentile. What does that mean? A. That means that the 20th percentile is that level at which 80 percent of the children nationally score above, and 20 percent below.

Q. Now, with reference to Exhibit 372, Dr. Klite,—or, pardon me, if you will refer to Exhibit 376, did you prepare Exhibit 376? A. Yes, I did.

Q. What does it purport to show? A. It shows the percentage of the district's Anglo, Negro and Hispano children who attended the schools depicted in Exhibits 372 to 375.

Q. And what is the source of the data of 376? A. The racial and ethnic data for the 1968 school year.

Q. That was in evidence at the summer hearing as Exhibit S, is that correct? A. Yes.

Mr. Greiner: Your Honor, we would offer Exhibit 376 at this point.

Mr. Jackson: If the Court please, this is one of those exhibits I indicated earlier we would not have a definite reading on until this evening. The preliminary examination indicates we are going to have some difficulty with the figures represented on

this exhibit, so at this time [148] I would have to object on the basis of its inaccuracy.

The Court: Well, we can postpone ruling until you have had an opportunity to study it carefully.

Mr. Jackson: We will be ready to advise the Court in the morning on Exhibits 376, -77, -78, -79, -80, -81, and -82, which I believe then finish the achievement area.

Mr. Greiner: Your Honor, I do have one question of counsel. Exhibit 372 identifies certain schools that are a certain percentile of achievement. The accuracy of that has already been admitted, and all that 376 does it take those schools that are identified in 372 and on the basis of district-wide racial compositions depicts the percentage of Anglos, Negroes, and Hispanos who are in those schools. I don't see that it really has anything to do with achievement per se.

I wondered if we couldn't get through at least 376.

Mr. Jackson: If the Court please, the exhibit does not purport to show the racial or ethnic composition of each of those schools, but, rather attempts to relate the percentage of the Anglo, Negro or Hispano population in that school as a part of the school district as a whole.

Our difficulty with this exhibit is that our initial inquiry into this field brings us up with different figures and it is merely a mathematical computation which has not yet been made. It is related to achievement, as the title of the [149] exhibit shows, correlation with achievement scores.

The Court: Well, we will postpone a ruling on this until you have had an opportunity to study it.

Mr. Greiner: All right. Well, Your Honor, we are going to have the same problem. I think we can go ahead and put in 373, 374, and 375.

The Court: They have no objection to those.

Mr. Jackson: No objection to those, Your Honor.

The Court: They will be received.

(Plaintiffs' Exhibits Nos. 373, 374, and 375 were received in evidence.)

Q. And also 375—yes, 375, and at that point until we can utilize 376 I think we are going to have some problems, so I will go now then to Exhibit 373, Dr. Klite, and ask you what does that exhibit depict? A. This is a similar computation that was made for Exhibit 372. It shows the elementary schools whose average median achievement in the fifth grade in 1968 was below the 30th percentile.

Q. How many such elementary schools are there shown on Exhibit 373? A. I believe there are thirty.

Q. That's out of a total of how many elementary schools in the District? A. Ninety-two.

[150] Q. That's approximately a third then of the elementary schools? A. Approximately.

Q. All right, then, calling your attention to Exhibit 374, Doctor, what does 374 depict? A. This is a similar computation showing the schools below the 40th percentile level, the elementary schools.

Q. How many such schools are there of the elementary schools of the district? A. Approximately 45.

Q. So, that's approximately half of the elementary schools? A. Yes.

Q. Finally, Doctor, Exhibit 375, which is also a map, depicts what? A. This is a similar plot of those elemen-

tary schools whose fifth grade median acievement was above the 60th percentile.

Q. Above the 60th percentile means what? A. It means that level below which 60 percent of the students nationally tested.

Q. And how many such schools are there? A. Twenty-two.

Q. Twenty-two out of the ninety? A. Yes.

[151] Q. All right, now, I would like to call your attention to Exhibit 380, and, Your Honor, before going on, I would like to advise the Court that tomorrow we would go back to Exhtbit 376 and complete that portion of the witness' testimony.

The Court: All right.

Q. (Continued) With regard to Exhibit 380, Doctor, would you identify Exhibit 380, please? A. Yes, Exhibit 380 lists the mean achievement level at the 20 schools with the lowest Anglo population in the district in April of 1969, for the achievement test on paragraph meanings, which was administered to the second, third, fourth, fifth and sixth grades at those schools.

Q. Paragraph meanings is one of the subjects which were tested? A. That is the only test that appeared on the data sheets that we had, yes.

Mrs. Greiner: Your Honor, we offer 380, and as I understand it, counsel has a similar problem with 380.

Mr. Jackson: With 381, 382, and 380, yes, sir. The problem is not necessarily similar to the extent it is a mathematical problem. The question is the actual

source of the mean scores as they are shown on the exhibit.

I have been advised by the witness that the source data for 380 and 381, and, of course, by the same token, 382, [152] the package is available and may be examined, but it is not anything which we furnished to the plaintiffs and have not had a chance to examine, but will have it examined by this evening.

The Court: Well, what is the source of this data?

The Witness: These are reports on single sheets listing by school, by grade level, the results of this achievement test in 1969. The purpose of each of these—

The Court: Reports by the schools?

The Witness: Yes.

The Court: To whom?

The Witness: I don't know who they are addressed to. They were obtained from a member of the school administration. They are depicted to show the percentage of students who were more than two years behind at each level in this test, but they show the mean achievement score in that test.

* * * * *

[161] * * *

Q. Dr. Klite, you have previously testified today with respect to the location of new Manual High School, and would you tell us again, please, where new Manual is located in relationship to its school attendance area? A. It was in the eastern corner of this attendance area, one-half block from its boundary.

Q. Now, what was the situation with respect to Cole Junior High School, which you have testified to? A. Cole

was approximately four blocks from its eastern boundary.

[162] Q. And with respect to the location of Barrett Elementary School, which was in evidence from the summer hearing, where was Barrett located in relation to its school attendance area? A. I believe that its playground was on its eastern border.

Q. Referring to Plaintiffs' Exhibit 20, which is in evidence with respect to Gove Junior High School, was Gove located in the middle of its attendance area? A. This Map Number 6 is from a reproduction of the 1962 boundaries and shows that the Gove attendance area was an irregular one with a long arm extending from approximately Forest Street east of Colorado Boulevard to the city limits.

Q. What about the location of West High School in respect to its attendance area? A. I believe Exhibit 396, which is in evidence,—

The Court: That's Forest Street and what, for Gove?

The Witness: It's difficult to describe, Your Honor. I think, if you look at the map, it's much easier seen. It's a long arm that extends—approximately two blocks wide that extends towards the city limits and then enlarges.

The Court: Now, when did this occur? When does [163] it? Or when did it?

The Witness: It existed, we know, in 1960. It ceased to exist in 1964.

Q. Do we know how far prior to 1960 it existed? A. I'm not sure it was formed when Hill was built or not, in—

Q. When was Hill opened? A. —1956. I'm not sure.

Q. Doctor, with respect to the location of West High School and its attendance area, was there a time when West was located in the upper northeast corner of its attendance area? A. It is so depicted on the base map in Exhibit 396, the 1950 site needs study.

* * * * *

[181] * * *

By Mr. Greiner:

Q. Dr. Klite, I'd like to first call your attention to what are now in evidence as Plaintiffs' Exhibit 372. 372, as I recall it, depicts a group of schools whose achievement level is at the 20th percentile, is that correct? A. That's correct.

Q. Now, would you refer, please, to Exhibit 376, and this has now been designated as 376-R. And it indicates that it has been revised from Exhibit 376, which was just received in evidence.

And would you, first of all, explain to the Court and counsel what the nature of the revision is in Exhibit 376-R? A. The percentage of Anglo, Negro and Hispano has been rounded off.

Q. And what process did you use in rounding it off? [182] A. All values of .5 percent below on even numbers, were rounded off to a lower number, and above that, to the higher number.

Q. Now, was there also an additional source listed for Exhibit 376-R? A. Yes, Plaintiffs' Exhibit 242.

Q. And what is the source of the data reflected in Exhibit 376-R? A. These are the estimates of racial and ethnic composition of each school as indicated in Defendants' Exhibit S, with the alteration that the small number

of Indian, Oriental and, quote, Other, unquote, categories have been included with the Hispano, a practice which the school district from time to time practices.

Mr. Greiner: Your Honor, at this time we would tender 376-R and offer it in evidence.

Mr. Jackson: I have just one question, Your Honor. My copy of 376-R shows as the source Plaintiffs' Exhibit 241, I believe.

The Witness: That's incorrect, Mr. Jackson. It should be 242.

Mr. Jackson: I would make the same objection to this, Your Honor, as I previously made to 376.

The Court: Very well. We will receive it.

(Whereupon, Plaintiffs' Exhibit 376-R was received in evidence.)

[183] Q. Doctor, referring to Plaintiffs' Exhibit 376-R, with respect to the schools depicted on Exhibit 372, what does Exhibit 376-R show as to the racial composition of those schools? A. It shows that those eleven schools contain 3 percent of the city's Anglo children; 36 percent of the city's Negro elementary children; and 28 percent of the city's Hispano elementary children.

Q. Now, calling your attention to Exhibit 373, the map which portrays the schools achieving below the 30th percentile, how many such schools were there? A. I believe there were 30.

Q. Now, referring again to Exhibit 376-R, what does that exhibit reflect with respect to the racial composition of those 30th percentile schools? A. It shows that attending those 30 schools are 13 percent of the city's Anglo elementary children; 61 percent of the city's Negro chil-

dren, and 64 percent of the city's Hispano elementary children.

Q. Now, with respect to Exhibit 374, Dr. Klite, which portrayed schools achieving below the 40th percentile, how many such schools are there? A. I believe there were 45.

Q. Calling your attention to Exhibit 376-R, what does Exhibit 376-R show as to the number of students attending [184] those schools below the 40th percentile in achievement? A. 26 percent of the city's Anglo students attend those schools; that 87 percent of the city's Negro students and—

The Court: How many?

The Witness: 87 percent of the city's Negro students and 78 percent of the city's Hispano students attend those 45 schools.

Q. An achievement below the 40th percentile means what? A. To the level below which 60 percent of the children nationally score.

Q. Then, finally, Doctor, with respect to Exhibit 375, which depicts schools achieving at above the 60th percentile, how many such schools were there? A. 22, I believe.

Q. And referring then to 376-R, what percentage of the elementary school population by race or ethnicity attend those 60th percentile achieving schools? A. 42 percent of the city's Anglo children and 4 percent each of the city's Negro and Hispano children.

The Court: May I have those percentages again.

The Witness: 42 percent of the Anglo children, 4 percent of the Negro children and 4 percent of the Hispano children.

[185] Q. Doctor, I would next like to call your attention to Exhibit 380—which has been marked now in evidence as Exhibit 380. What does Exhibit 380 depict? A. I do not have 380 here, Mr. Greiner.

Exhibit 380 shows the paragraph-meaning mean score in April.

The Court: What mean score?

The Witness: The mean score in the paragraph-meaning test.

The Court: We started on that yesterday.

The Witness: Yes, that's correct. I think I already indicated what this shows. During Grades 2, 3, 4, 5 and 6 for 20 schools.

Q. And then Exhibit 381 depicts what Dr. Klite? A. The score—the mean scores on the same test for 21 predominantly Anglo schools.

Q. Then, calling your attention to Exhibit 382, which is now in evidence, what does Exhibit 382 depict? A. 382 is a graph that depicts the average of the scores at each grade level of the schools listed in 380 and 381.

Q. How do these two groups of schools compare as reflected on Exhibit 382? A. There's a difference in the average of their achievement during the second grade test, which was [186] administered in the sixth month of the second grade of approximately one grade level. That gap widens to—At the fifth grade the difference is slightly more than two grade levels.

Q. This is the difference in what? A. This is the difference in the averages of the mean achievement score in one achievement test administered during the 1969 school year.

Q. Referring again to Exhibit 382, Doctor, at grade level 4.6, what is the average in the Anglo schools? A. In these Anglo schools it is 5.44.

Q. And what's the average in the minority schools? A. In these minority schools it is 3.58.

Q. Which is a difference of what? A. Looks like about 1.9 grades.

Q. Now, according to Exhibit 380, are there any of the minority schools achieving a grade level on this particular exam? A. Stedman School in the second grade is achieving at grade level. I think that's the only example.

[187] Q. And referring to the next grade level at Stedman, what does Exhibit 381 reflect? A. It shows that the students one year at—one year ahead at grade 3.6, different students, were achieving .18 grade levels higher.

Q. Referring to Exhibit 381, at the sixth grade level, what is the highest achieving Anglo school? A. The mean achievement in this test at Fallis Elementary School to the sixth graders was graded 9.

Q. And at the sixth grade level, what was the lowest grade in the minority schools? A. Grade 4.2 at Mitchell.

Q. That was a difference of how many grade levels, Doctor? A. 4.78.

Q. Now, Doctor, as I understand it, the triennial testing program administered by the district has been going on since the year 1950, is that correct? A. Yes, sir.

Q. Were the results of that testing program reported differently at any given time? A. Are you referring to the normalizing scores in the fifth grade in 1965?

Q. Yes. A. Yes.

[188] Q. And what was the difference? A. In the fifth grade in 1965, the expected score was adjusted to a na-

tional norm. If you would like, I could quote to you from an exhibit how this was conducted.

Q. Yes, would you, please? What exhibit do you have reference to? A. 379.

The Court: Which exhibit are you referring to now?

The Witness: This is Exhibit 379, Your Honor. I am reading from—

Q. Pardon me, Dr. Klite, would you please identify Exhibit 379? A. Yes, these are Xeroxed copies of the achievement records from the triennial testing of Wyatt, Cole, Merrill, Morey, and Fairview Schools in the years 1956, '59, '62, '65 and '68.

Q. Would you then continue, please, Doctor. A. Yes, I am quoting now from the Wyatt School Fifth Grade Achievement in 1965, and it says:

"Your grade placement chart—the authors of the Stanford Achievement Test Battery have developed a 'norm adjuster' designed to enable a school to adjust the total group norms of the various subject tests in terms of the mental ability of the pupils tested. This adjuster is used for Grade 5 pupils and applies only in relation to the national [189] norm expectancy. Consequently, the reports on all Grade 5 pupils are prepared by establishing a national norm for Grade 5 at Grade 5.7 grade placement and adjusting to grade placement achievement in the various subjects tested by use of the deviations provided in the 'norm adjuster'. The red expectancy background for the grade placement chart for your school is at the underlined national norm for fifth grade pupils. All Q-3 median and Q-1 levels of achievement have been adjusted up or down according to the median IQ of the group tested."

Q. Doctor, have you prepared an exhibit which reflects the effect of the adjustment referred to in quotation which you have just made? A. Yes, I have.

Q. And that is Exhibit 378? A. Yes, it is.

Q. And would you tell us, please, what 378, which is now in evidence depicts? A. 378 lists the individual test results in eight tests for twenty predominantly Anglo schools and twenty predominantly minority schools in the years 1962, 1965, and 1968.

Q. And 1965 was the only year in which this normalizing process was used? A. That is correct.

Q. Then, what was the effect of this normalizing process as reflected in Exhibit 378? For example, what happened at [190] Wyatt School? A. Well, Wyatt School on the paragraph meaning test, for example, had a grade placement of 4.8 in the 1962 testing, a grade placement of 3.2 in the 1968 testing. In 1965, when the median was normalized, the recorded result was grade 6.4.

Q. So then there was an increase in 1965's report as to Wyatt? A. Well, the published median scores for Wyatt in paragraph meaning was almost two grades higher in 1965 than it had been in '62 and two and a half grades higher than it was in '68.

Q. Now, referring to the 1965 report for Wyatt contained in Exhibit 378, Doctor, what did the school district say about the achievement at Wyatt in 1965? A. The summary for the fifth grade states:

"The grade placement chart shows achievement well above the national norm by pupils at all levels of ability. Most scores reflect the success with which the staff is imparting basically academic skills. When comparison is made with the national norm, the fifth graders at Wyatt School appear to be well prepared to meet the academic challenge

of the sixth grade. The total results reflect a carefully planned program for all levels of ability. The staff and community may be well pleased with these results."

Q. Now, Doctor, three years later, when no normalizing [191] was used at Wyatt, what was the achievement level in that particular test? A. Grade 3.9. That's the fourteenth percentile.

Q. Doctor, we have mentioned briefly the question of expectancy yesterday. Referring to Exhibit 379, and in particular I have in mind Baker Junior High School and Merrill Junior High School, with respect to expectancy, does it vary by school? A. Yes, it does.

Q. And the two schools which I have just mentioned, what are the expected levels of achievement? A. Well, they vary from year to year.

Q. In 1956? A. In 1956 at Merrill, the expected achievement was the 72 percentile. The same year at Baker, the expected achievement was 23 percentile.

Q. Now, what did the school district say about Baker's performance in 1956? A. The composite score at Baker was 23 percentile at expectancy. The summary states:

"The total score summarizes the good situation indicated in the two sections and their sub tests."

I am sorry, I am quoting from the wrong page.

"The summary indicates comparisons with 1953 results are not possible, as Baker did not have a ninth grade [192] then. These 1965 results reveal that a good, well-balanced program has been established. All ability levels are doing well. The sub test results might indicate that the composite scores, particularly at the median and Q-1 should be higher, but this column is affected by all scores of all tests. The uses of sources of information results show that the pupils have learned how to study, and this

together with their achievement in subject matter should help them at the senior high school level. The faculty should be pleased with this evidence of its good work."

Q. This was a school in 1956 that was achieving at what percentile? A. Twenty-three.

Q. Now, in 1956, what were the actual test results as reported for Merrill Junior High School? A. Eighty-two percentile. That was the median.

Q. What did the School District say about performance at Merrill? A. "The composite score summarized the favorable situation presented in the sub tests. All exceeded expectancy, the median by about 10 percentile points, Q-1 by about 15. The faculty should be well pleased with these attainments. A very high standard has been established by this new school, which it should strive to equal in the future."

Q. Calling your attention to the 1956 report for Cole [193] in Exhibit 379, what was the level of expected achievement at Cole, and what were the results? A. The expectancy mean was 23. The composite mean was 21.

Q. And what did the School District say about the achievement levels at Cole? A. "All scores and all subject matter tests are combined in the composite scores. The general situation here is good with the median and Q-3 at expectancy and Q-1 only slightly below it. The general picture of this group is very similar to that of the group tested in 1953. In both years, pupils at all levels experienced satisfactory achievements in the subject matter areas. The faculty should be pleased with these accomplishments."

Q. This was a school achieving at what percentile? A. Composite score was 21.

Q. Referring to the 1962 report as contained in Exhibit 379, Doctor, what was the result of the achievement testing

at Cole in 1962? A. The expectancy median was 29. The achievement was 27, median.

Q. What did the School District report with respect to the achievement at Cole? A. "This chart displays a very consistent representation of ability. The pupils at Cole have performed about as [194] expected in most of the tests at all three levels. There is no unusual display of strength, and with the possible exception of the Q-3 score in general vocabulary and scores on Test 1, Concepts of Basic Social Studies, there is no significant weakness. The red area on this chart is considerably higher than it was in 1959, and since the bars occupy positions almost totally within the expectancy areas, parents and teachers should consider educational achievement to be satisfactory. However, a general picture may indicate that many of Cole's pupils will have difficulty achieving high school graduation unless some decided improvement takes place in their learning."

Q. That was in what year, 1962? A. I have lost my place here. I believe that was, yes.

Q. Now, again referring to Exhibit 379, Doctor, what were the achievement test results reported for Cole Junior High School in 1965? A. The expected median was approximately 28. The median achievement was 23.

Q. How does that 23 compare with the 1962 results at Cole? A. It is lower.

Q. What did the School District say in 1965 as to these achievement test results at Cole Junior High School? A. "The general picture at Cole is satisfactory. The [195] composite scores imply that some small lack of strength exists, which is discussed above. The red expectancy background on the 1965 chart is somewhat wider than it was in 1962, which would seem to suggest that the ability pat-

tern of the student body at Cole is changing. If such a change is true, a limited amount of adjustment within the instructional program may be advisable. It must be re-emphasized, however, that the overall accomplishment as shown on the chart is very acceptable and the pupils should be proud of their showing on these tests. The parents and teachers should be pleased with the result."

Q. There is no reference in the 1965 report then to graduating from senior high school? A. No, sir.

Q. Is the achievement level in '65 lower or higher than it was in '62 when that comment was made? A. I believe I just said it was lower.

Q. Dr. Klite, I have handed you what has been marked for identification as Plaintiffs' Exhibit 242, 243, 244, 245, 246, 248, 273, 274, 275, 276, 277, 278, 279, 302, 303, 304, 305, 306, 307 and finally 308. Doctor, what common characteristics do these identified exhibits have? A. Excuse me, Mr. Greiner, did you mention 247?

Mr. Greiner: No, I did not. Is 247 there?

A. I have that here.

Q. All right. [196] A. These lists—these are computer print-outs which show pupil numbers by race and ethnicity, numbers and percentages faculty experience and building facilities at all of the schools in District No. 1. The elementary schools, junior highs and senior highs are on different exhibits.

Q. Is teacher experience data also reflected in those exhibits? A. Yes, it is.

Mr. Greiner: Your Honor, the authenticity of each of the listed exhibits has been agreed to by counsel, and at this time we would offer those exhibits into evidence as listed.

Mr. Ris: You started reading those numbers so fast—

Mr. Greiner: Here's a list.

Mr. Ris: All right, thank you.

The Court: This is what might be termed a wholesale offer, so you are entitled to more time.

Mr. Creighton: Your Honor, there is a stipulation regarding all this list now being offered, setting forth that we agreed that the basic data accurately reflects data in School District records. That it has been run through a computer, what they show, and with the understanding that they have the entire data run through the computer and display it in a somewhat different way, we have no objection.

Mr. Brega: No objection.

[197] The Court: Very well.

Mr. Greiner: They will be received then, Your Honor?

The Court: They will be received.

(Whereupon, Plaintiffs' Exhibits 242, 243, 244, 245, 246, 247, 248, 273, 274, 275, 276, 277, 278, 279, 302, 303, 304, 305, 306, 307 and 308 were received in evidence.)

Mr. Greiner: Your Honor, then that concludes our examination of Dr. Klite.

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[197] * * *

The Court: All right.

Cross-Examination by Mr. Ris:

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[213] * * *

Q. Now, did you search the minutes of the Board of Education for the period between 1950 and 1955 for boundary changes, action taken to boundary changes? A. I perused the minutes. I did not search them intensively.

Q. Now, with respect to the one change that you inferred that there may have been a change between the Cole and Smiley boundaries in 1952 or 1953, you actually found no record either in the superintendent's records or the board minutes of such a change? Correct? A. Just as stated in the board minutes, yes, with the Race Street boundary—you're right, I'm sorry. Let me retract that. No.

Q. So that actually you have drawn an inference from several—from a couple of documents that you have examined and because of variances between those that there may have been a change? A. Yes.

Q. But other than such an inference, you found no evidence in an actual change during that period of time? [214] A. That's right.

Q. And actually the change you're referring to was a change of an optional area to a mandatory area? A. It would have been, yes.

Q. And it involved a half a block for a few blocks and then a block and a half in width for another couple of blocks, is that right? A. That's right.

Q. And that's the only change you inferred for that period of time? A. That's correct.

* * * * *

[219] Q. You have studied, I presume, Exhibit 356, entitled "The New Manual"? A. Yes.

Q. And from your study of this, you know that a great amount of time and effort was devoted by many, many people to determine the characteristics that the new Manual should have? A. Yes.

Q. This was a very comprehensive study, and the reports were in this exhibit from the administrative staff, central administrative staff, right? A. Yes.

Q. From the school principals and teachers? A. Yes, sir.

Q. Students? A. Yes.

Q. Parents? A. Yes.

Q. And the community at large? A. Right.

Q. And very substantial studies were made as to vocational interests and what the students and the people in that community wanted in their new high school? A. Yes, sir.

Q. Not only physically but by way of curriculum, right? A. Yes.

[220] Q. And the new Manual then was constructed and curriculum then adopted based upon this exhibit, as far as you know? A. I am sure this exhibit was important in what they added up to, yes.

Q. Did you make any study of the curriculum after the new Manual was built, as compared to East High School, for example? A. No, I did not.

Q. Are you aware that there was a substantial difference in the curriculum between the two? A. I have heard it alleged.

Q. Would that be an element in considering subsequent boundary changes? A. I don't know why it would.

Q. You don't, after all the studies that went into the new Manual? A. Unless the type of curriculum at Manual was not offered any other place in the city, you would have to make provisions for students all over the city to

be able to come there or students who lived in the Manual district who didn't want that type of curriculum to go some place else. That's how it could affect it.

Q. This is your present theory? A. Yes, sir.

Q. This is not anything you obtained from anybody in [221] the school district? A. No.

Q. All right. Now, in 1956 there was a major event that occurred that had a very substantial influence on redrawing of boundaries in east and northeast Denver, was there not? A. Are you referring to the opening of Hill Junior High School?

Q. Yes. Did that occur in 1956? A. Yes, it did.

Q. You didn't mention that yesterday, I don't believe, did you? A. That Hill opened? No, I did not.

Q. Now, it was the opening of Hill in 1956 that required the establishment of new boundaries for Hill? A. Correct.

Q. Dr. Klite, certainly your study reflects that when a new school is opened, particularly a secondary school, in a city such as Denver, and new boundaries are established, that it affects the boundaries of every other school at the same level surrounding it? A. Yes, it may.

Q. In turn, that may indirectly affect boundaries of schools beyond that first tier? A. That's correct.

[222] Q. So that actually in your reviewing of the minutes of the Board and the action taken, it all centers around the opening of Hill and spreads out from that point, right? A. I don't know if I could make that statement, Mr. Ris.

Q. You wouldn't go that far? Would you say it had any effect at all, the opening of Hill, on the boundaries of Smiley? A. It might have. If you let me digress, perhaps, for one second, the amount of area ceded to Cole, for example, was very small. It didn't seem to me to make any difference whether it was ceded or not in terms of its

capacity utilization, so I don't know if you could say that Hill was the reason for that.

Q. If you are talking about the area ceded to Cole in 1956, you are talking about the area west of City Park and west of York Street about four blocks wide? A. That's right.

Q. And when you say that was ceded—that had not been part of the Smiley area that had been optional Smiley or Cole, isn't that correct? A. That's correct.

Q. So, it was nothing new? Any child, even prior to that, could go to either Cole or Smiley? A. Living in that area, Yes.

Q. And, now, it merely made it mandatory for them in [223] that small area to go to Cole? A. That's right.

Q. And that's what you mean by ceding? A. Yes.

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[245] • • •

Further Cross-Examination by Mr. Jackson:

Q. Dr. Klite, if you would, would you get before you the maps identified as 372, 373, 374 and 375, please? Now, [246] would you explain to us again, Dr. Klite, the basis upon which you selected the schools appearing in the map designated Exhibit 372 as being below the twentieth percentile? A. Yes, from Exhibit 83, the median percentile score of each individual's achievement test was averaged.

Q. And was this procedure followed also in 373, 374 and 375? A. Yes, sir.

Q. And this was purely a mathematical computation of averaging the median scores? A. That is correct.

Q. And was that for all tests given? A. Yes.

Q. That year? A. Yes.

Q. Do you have a copy of Exhibit 83 in front of you, Doctor? A. Yes.

Q. What is the median score that you averaged, Dr. Klite? What is a median? A. It is a score above which and below which half the students have scored.

Q. So, on Exhibit 372, which shows schools whose medians fell below the twentieth percentile, there were a number of students in each of those schools scoring well above the [247] twentieth percentile? A. Scoring above it, yes.

[248] Q. And depending upon the specific average attained for any one school, it could be as high as 49.9 percent, is that correct? A. For any individual student?

Q. No, for the school. It could be 49.9 percent of the students achieving above the 20th percentile? A. Yes.

Q. So what that exhibit, in reality, shows is that at least 50 percent of the students in those schools were achieving at those levels? A. That is correct.

Q. And was this for the entire school, Dr. Klite? Does this map purport to show the achievement level of all the children in the school? A. This map is based on fifth grade source.

Q. So we're talking now of only fifth grade students? A. That's correct. I might add, Mr. Jackson, that the third grade scores are available and they are quite similar.

Q. But you have not prepared any maps on that basis? A. That's correct.

Q. Do the schools that scored below the 20th percentile in the fifth grade also score below the 20th percentile in the third grade? A. Some of them do. Many of them don't. Many of [249] them scored higher in the third grade. For example, Wyatt's median was 42 percentile in the third grade and 15 percentile in the fifth grade.

Q. But you have not shown the third grade achievements on any of these exhibits? A. That's correct.

Q. Now, in Exhibit 373, Dr. Klite— Let's skip to Exhibit

375, if you will. Do you find Gust Elementary School shown up on that exhibit? A. Yes, I do.

Q. Would you, Dr. Klite, turn to the portion of Exhibit 83 which shows the median percentile ranking for the fifth grade at Gust and you might tell your counsel where that appears. A. No page numbers.

Mr. Jackson: Did you find it?

Mr. Greiner: (Shakes head negatively.)

A. (Continuing) I have the place.

Q. Now, Exhibit 375 indicates that the median percentile at Gust Elementary in the fifth grade was 60th percentile and above, does it not? A. Yes, it does.

Q. Would you, Dr. Klite, take your time and compute the average of the median as shown on Exhibit 83 for Gust, the percentile? [250] A. I have just done that, Mr. Jackson.

Q. What do you come up with? A. I come up with a median of 59, point, something. I can't do the division in my head.

Q. But in any event it is less than 60? A. I think it will round off to 60, Mr. Jackson.

Q. That—is that the reason it was included? A. Yes.

Q. Then if you would back up in the same series to Denison School, again fifth grade percentile ranking, and if you would compute the average of the median there? A. You have caught me, Mr. Jackson. It's 56.

Q. 56, point, something, not 59, point, something? A. No, sir. 56.

Q. On which now? A. Denison.

Q. Now, Dr. Klite, Exhibit 376 and Exhibit 376-R, has as their source the Exhibit 83 as well as, I believe it's

Defendants' Exhibit F, does it not? A. And Plaintiffs' Exhibit 242 is listed on 376-R.

Q. Yes. So these figures then are taken from the grouping of schools which you achieved on your map, is that correct? A. Yes.

Q. So if the grouping of schools on the maps are [251] incorrect, then this exhibit is incorrect, is that true? A. That is correct.

Q. Now, Dr. Klite, Exhibit 376 was changed from yesterday to today. Would you indicate to the Court, please, the reason for that change? A. Yes, the final percentage of students was computed with a slide rule and after checking and finding it impossible to be extremely consistent on some of the tenths of these percentages, the figures were rounded off.

Q. Now, the Hispano grouping on 376-R includes all students within the Denver Public Schools who are not otherwise identified as Anglo and Negro, does it not? A. Correct.

Q. And they are placed with the grouping with the Hispano rather than either of the other two groupings? A. That is correct.

Q. Now, move if you will, Dr. Klite, to Exhibit 377. There is a note contained at the bottom of that exhibit, is there not, Dr. Klite? A. Yes.

Q. And that note indicates that the test given in 1956 and 1968 were not the same test, is that correct? A. That's correct.

Q. And yet the exhibit purports to compare the scores achieved in 1956 with those achieved in 1968 at the [252] respective schools? A. The district has used literally hundreds of different tests during that period, Mr. Jackson.

Q. But the exhibit purports to compare the results from different tests, does it not, for those two years? A. The

exhibit shows the results of the tests in those two years, yes.

Q. And they are different tests? A. Well, there are, I'm sure, different questions. They are the same general type of test, I am sure.

Q. Do they contain the same number of subtests? A. I don't know.

Q. Doesn't your exhibit show? A. My exhibit does not mention subtests. I'm sorry. Yes, it does. There were a different number of subtests.

Q. In two years? A. That is correct.

Q. Do you know, Dr. Klite, whether or not conversion tables are available for the 1956 test in order to correlate the results with the 1968 test? A. I don't know.

Q. Do you know whether these tests were alternate forms of the same test? A. No, I do not.

Q. Do you know when the 1956 test was standardized? [253] A. No, I do not.

Q. Do you know when the 1968 test was standardized? A. No.

Q. What do you know about these tests? A. I know that these were the tests given by the Denver Public Schools upon which they relied to publish the achievement scores of the grades indicated and the years indicated.

Q. For those specific tests? A. That is correct.

Q. But you don't know how they compare it at all? A. No, I don't.

Q. And did you prepare this exhibit? A. Yes.

Q. Now, Doctor, if you will, one other question on Exhibit 377. The title is "Average Mean Achievement Score, Third Grade." Were the scores ever reported in 1956 or 1968 as mean scores? A. No, they were median scores.

Q. So that should also be changed? A. Yes, that should be changed.

Q. Now, on Exhibit 378, Dr. Klite, the title of the exhibit is "Effects of 'Normalizing' Achievement Scores." And you read from—I believe it was Exhibit 379 regarding the normal adjustment process, is that correct? [254] A. Yes.

Q. Does the word normalizing appear in Exhibit 379? A. No.

Q. This is your word? A. That's why it's in quotes.

Q. All right, now, Dr. Klite, on Exhibit 378, are tables showing achievement scores by grade level for 1962, 1965 and 1968, and then there is a percentile ranking for 1968, also, for certain schools. Can you tell us which test these represent in 1962, in 1965 and in 1968? A. Paragraph meaning.

Q. Are these the same tests or is this like Exhibit 377 where we had different tests given in these years? A. I do not recall. They could very well be different versions of paragraph-meaning achievement tests, yes.

Q. And the paragraph meaning would be one portion of the larger test? A. Correct.

Q. And there was paragraph meaning in the tests identified in Exhibit 377, was there not? A. I believe there was.

Q. And in that instance it was a part of either six tests or of eight tests? A. That's correct.

Q. So this would be one.

[255] Now, was the normal adjustment process which you read to us a design of the Denver Public Schools? A. No.

Q. Whose design was it? A. I believe, as I quoted, it was available from the Stanford Testing Bureau.

Q. This was a national process? A. This was a process that was available, yes.

Q. And were the instructions given by the test publisher as to how the grades would be adjusted for norms? A. I believe, as I read the paragraph, it said that they have a

conversion table, or they have the means of converting the scores.

Q. Do you know how these conversion tables work? A. No. I know generally how it works. A school with—

Q. Well, you either know or you don't know how it works, Dr. Klite. Which is it? A. I know how it works in general, Mr. Jackson.

Q. Do you know how it worked in regard to Greenlee School in 1965? A. I don't know the specific process that was followed for Greenlee. The general process would have been to take the average score of Greenlee, change its expectancy, which might be a grade below grade level to grade level, and report [256] the grade achievement score on the basis of the new calculation.

Q. Wasn't the expectancy absolutely the same for every school in 1965 on this norm adjustment process? A. That's what norm adjustment was all about.

Q. In other words, every single school in the fifth grade had an expectancy of 5.7 grade level? A. That's correct.

Q. So the expectancy was not changed at all, was it? A. Yes, it was. The expectancy previously had been all over the place; had varied tremendously among schools.

Q. Why is that, Dr. Klite? A. The expectancy calculations, as I read yesterday, apparently were based on the interquartile distribution of I.Q. scores.

Q. Do you know for certain how it's based? A. I have just told you, Mr. Jackson; on the interquartile distribution of I.Q. scores.

Q. I believe you indicated you thought generally this was the way. A. I was just trying to remember the exact quote in the pamphlet.

Q. Do all children achieve at the same level, Dr. Klite? A. No.

[257] Q. Would you expect them to? A. No.

Q. Dr. Klite, I wish you would examine for a moment Exhibit 379, that package, like this. A. Which part of it, Mr. Jackson?

Q. Well, I wish, if you would, first advise me and advise the Court the schools that are represented by the materials in Exhibit 379. A. Wyatt, Cole, Merrill, Baker, Morey, Fairview.

Q. So within that group then you have two elementary schools, Wyatt and Fairview, and four junior high schools, Cole, Merrill, Baker and Morey? A. That's correct.

Q. And I believe you testified, Dr. Klite, that in Baker, for example, in 1956, that you expected achievement at Baker—and I believe it was for the fifth grade—I mean for the 9th grade, but I could be mistaken—was 23 percentile. Do you recall that portion of your testimony? A. Yes, that's correct.

Q. And that expectancy is shown in the ninth grade section of Baker, April, 1956, as the heavy, dark line marked XA? A. Correct.

Q. And reflects a median? A. That's right.

[258] Q. Now, within that same exhibit do you find the median for the achievement scores actually received by the students at Baker? A. Yes.

Q. It's true, is it not, Dr. Klite, that in all of the nine subtests with one exception, that the achievement at Baker exceeded the expected achievement? A. That's correct.

Q. Now, in 1968 in Baker do you find that the achievement scores are reported at percentile scores? A. Yes.

Q. Directing your attention to Test 3, Dr. Klite, Correctness of Writing— A. Yes.

Q. —what is the highest percentile ranking achieved at Baker in 1968? A. By any individual student?

Q. Yes. A. 99.

Q. And what does that mean in terms of that student's relationship to the nation as a whole? A. That means that that student was among the top one percent in that test.

Q. That 99 percent of the other students tested throughout the country were at a lower level of achievement [259] that this? A. That's correct.

Q. In that same test, Dr. Klite, what is the Q-3 ranking, approximately? A. Approximately 58th percentile.

Q. Which means that the Q-3 ranking on that same test is above 58 percent of the students tested nationwide? A. Correct.

Q. Now, if you would, Dr. Klite, turn your attention to Merrill, again, in 1968, and again Test 3. What is the highest score achieved at Merrill? A. An individual score as high as 99 and as low as one.

Q. Now, how did those compare with the results at Baker in the same year on the same test? A. That means that at least one student at Merrill scored just as well as one student at Baker.

Q. And was the reverse true also? A. I believe it was.

Q. So there were students who were scoring just as poorly who attended Merrill as those that attended Baker? A. At least one student. We don't know if it was more than that from this table.

Q. We do know, for example, that at Baker in that year for the same test that at least 25 percent of the [260] students at Baker were above the 58th percentile on Test 3, do we not? A. Correct.

[261] Q. And I direct your attention to Cole for the same year, same test. Are the results exactly the same as for Merrill and for Baker? A. You mean in terms of what, at least one student—

Q. Of the extremes of the percentile. A. Yes, at least

one student has performed at the 99 percentile and at least one at 2 percentile.

Q. How many tests were given in 1968, Dr. Klite? A. Nine tests.

Q. In terms of Cole, out of those nine sub tests, there are 99 percentile ranking for— A. Five.

Q. Five, as well as the composite for one to eight? A. Right.

Q. So, in at least five of the nine sub tests areas, students at Cole scored as high or higher than 99 percent in the entire country that took the test? A. At least one student.

Q. And the same is true for Merrill? A. At least one, right.

Q. Now, Dr. Klite, in 1968, does Exhibit 379 also give the estimated ethnic distribution of pupils for the schools one year prior thereto, or within the test year, excuse me. A. Are you referring to this page?

Q. Right. [262] A. Yes, right.

Q. And what is the estimated ethnic distribution of pupils at Merrill? A. Ninety-nine percent white, Anglo.

Q. At Cole? A. Six percent Anglo, 65 percent Negro, 28 percent Hispano.

Q. And at Baker? A. Nine percent Anglo, 8 percent Negro, 83 percent Hispano.

Q. Now, Dr. Klite, referring back again to your Exhibit 376—I guess who should say 376-R—that purports to show the percentage of Anglo, Negro and Hispano students attending the schools, for example, scoring below the twentieth percentile in the fifth grade on the test as they relate to the estimated ethnic distribution of the district as a whole; is that correct? A. That's correct.

Q. It does not in any way purport to show the estimated

ethnic distribution of the schools themselves as contained within the various exhibits? A. Just the totals of the groups of schools.

Q. As they relate to the district as a whole? In other words, 2.7 percent of the Anglo students is not the average percentage of Anglo students in the schools scoring below the [263] twentieth percentile, is that wrong? A. No, that's correct, not on the individual schools. That's the total number in those eleven schools.

Q. In those eleven schools, you might find schools with as high as 45 or 30 percent Anglo? A. There is one school, Smedley, that has about 38 perecnt Anglo, yes.

Q. Dr. Klite, what is your experience in the field of testing? A. You mean testing achievement scores to public school students?

Q. Yes. A. I have no experience other than analyzing the data of the Denver Public Schools.

Q. I believe you testified that you are not famiilar with the tests themselves, the results of which you have been analyzing; is that correct? A. That's right.

Q. Have you had any experience in standardization of tests? A. Not formally.

Q. Have you had any experience in devising tests for public school students? A. No, just medical students.

Q. Have you compared the various tests given by the [264] Denver Public Schools during the period of time covered by your testimony? A. No, sir.

Q. You do not know, do you, Dr. Klite, whether they are comparable or relevant to one another at all? A. No, sir, I am relying upon the District's judgment in choosing them.

Q. Does the fact of the existence of a test in one year necessarily mean it relates to the test as given in other years? A. I am sure there are differences from year to year between the tests.

Q. And the scores would therefore be different, would they not? A. They might.

Q. And might represent different things? A. I don't know if I could answer that, Mr. Jackson. They are used by the District to test the same general principles each year. They are using different tests—there is a consistency among the data of the school score from year to year, and while the exact score might not be identical, you are testing different children. Testing might be different. I think in general, they are fairly consistent from year to year.

Q. Now, Exhibit 83, the 1968 listing by school test, [265] reported tests in two different fashions, did it not, Dr. Klite? A. Percentile and grade level.

Q. All right, your exhibits relate to the percentile level that we were discussing earlier in terms of your map, Exhibit 372? A. Correct.

Q. Now, Dr. Klite, in Exhibits 380, 381 and 382, there are certain notations at the bottom of both Exhibits 380 and 381, are there not? A. Yes.

Q. And those refer again to the fact that different tests were given at different schools in second grade? A. That's right, in the second grade only, there were two different tests administered in 1969 for paragraph meaning.

Q. And that applies not only to Exhibit 380 but also to Exhibit 381, does it not? A. Yes.

Q. And is the frequency with which the two tests were given at the two schools which you have selected the same in Exhibit 380 and 381? A. No, it is not.

Q. How does it differ? A. Of the twenty schools—twenty-one Anglo schools, three of those schools were given a Primary-2 level—let's [266] see—a Primary-1 level test, Form X. Among the schools where the predominantly minority population, listed in Exhibit 380, thirteen of them

were given that Primary-1 test and one school was given both tests.

Q. Were any schools in Exhibit 381 given both tests? A. No.

Q. Do you know how those tests compared, Dr. Klite? A. No.

Q. Now, this exhibit is for April of 1969, for one section of the test given that year, is that correct? A. The only test results that we had available for that year was this one test, Paragraph Meaning. We did not have any other scores.

Q. But, again, the Paragraph Meaning is but one part of the composite? A. Yes, it is.

Q. And this was given at the same time of year to grades 2, 3, 4, 5 and 6, was it not? A. Yes.

Q. As indicated by the .6 following the grade level each time? A. Correct.

Q. And these were given to different students, each test? A. That's correct, yes.

[267] Q. Do you know anything at all about the students? A. How they were selected, you mean? No, I do not.

Q. Do you know how long they have been in the Denver Public School system? A. No.

Q. You don't know how long they have been at their particular school? A. No, I do not.

Q. Do you know anything about their IQ's? A. No.

* * * * *

[273] * * *

LORENZO TRAYLOR, called as a witness by the plaintiffs, being first duly sworn, on his oath testified as follows:

The Court: Please take the witness chair. Give us your name and address and occupation

Lorenzo Traylor—for Plaintiffs—Direct

The Witness: My name is Lorenzo H. Traylor, T-r-a-y-l-o-r. My address is 2694 North Lincoln Avenue, Altadena, California. I am employed by the U. S. Equal Employment Opportunity Commission as Area Director for the office of Los Angeles, which covers Southern California, Nevada, Hawaii, Guam, Wake Island, and some more.

Direct Examination by Mr. Barnes:

Q. Did you ever reside in Denver, Mr. Traylor? A. Yes, I lived at 2128 Vine Street.

Q. From what— A. From 1952 until 1956. Early in 1952 I lived on Downing Street, but I moved to Vine in 1953, I believe.

Q. Early in 1952, you lived on Downing Street? A. Yes.

Q. Then you moved to Vine Street? A. Yes, sir.

[274] Q. In what month did you leave Denver? A. I left Denver in May of 1956.

Q. What is your race? A. Negro.

Q. When you lived in Denver, did you have children in the Denver Public Schools? A. Yes, I had a son, Howard Traylor, who attended Morey Junior High School, and a daughter who was at Wyman Elementary School.

Q. In what school subdistrict boundaries did you live in your residence on Vine Stree? A. I lived in the Wyman Elementary School District and the Morey-Cole optional district, and the East-Manual optional district.

Q. Do you recall any proposals by the School Board to change the boundaries of the district in which you lived? A. Yes, in late 1955, I had information that the proposed boundary changes that you have been discussing here for the last couple of days was to take effect early in January.

Q. Can you identify what those boundary changes—what those proposals were? A. Yes, the optional areas between East and Manual, which extended from 17th Street to 23rd Street and from York to Race, were to be changed from—with that part from Race to York eliminated and placed in the Manual district, and there [275] was a district between Smiley and Cole and between Morey and Cole, and that was to be reduced in size. That is the optional area was to be reduced in size and the new optional area would be an area that would eliminate—would place the district in which I lived in the Cole district rather than optional between Cole and Morey, and would place me in the Manual district rather than in the optional Manual-East district.

Q. Did you have occasion to discuss these proposed changes with any representative of the School District? A. Yes, I had several discussions with members of the School District on this, these discussions beginning in early 1956, I think the first week in January, and continuing through until later in the year, perhaps in February or March.

Q. With whom did you have the first of these discussions? A. The first discussion I had with school officials was Mr. Holm, who was the person that I had been told by Dr. Oberholtzer to be the person who was in charge of the planned boundary changes.

Q. Mr. Traylor, did you go there in any official capacity? What was your occupation when you were here in Denver? A. At that time I was an educational and vocational counselor with the Urban League of Denver, and I went to see them as a member of the Urban League staff but also as a parent of young people who were involved in the proposed [276] changes.

Q. When you went to see Mr. Peter Holm, what substances were discussed? A. Well, in my initial discussion with him I asked such questions as, "Why are you making boundary changes?" I asked to see in writing the proposed criteria that was being used and also had a chance to look at some maps that he had available in the Administration Building. I think generally I expressed my concern that my family was involved and also that from what I had been able to see from the —together from the information that I had at that particular point, that those boundaries may have been discriminatory.

Q. Did you make any—after that meeting, did you make any effort to gather any further information about these boundary changes? A. Yes, after my first meting with Mr. Holm, at which time he indicated that the criteria being used was, first, overcrowding in some schools, empty seats in other schools, and they were concerned about equal distance, equal distance between schools and also transportation, and I believe he mentioned the fact that they were making some of these changes because of the building of a new junior high school in the west part of town; I called several people, and I suppose several people called me—

Q. May I interrupt you, Mr. Traylor? [277] A. Yes.

Q. Could that junior high school have been Hill Junior High School in the east part of town? A. Yes, Hill.

Q. Excuse me, continue. A. I called several people, and we got together a small quote, citizen's committee of about five people, who decided that we would take a look at what was being proposed and to get more information about it.

Q. Did you testify that this was early in January, 1956? A. Yes, I first heard about the boundary changes in De-

cember of 1955, but the activity I have just talked about occurred in early 1956.

Q. Did you have occasion then to meet again with representatives of the school district? A. Yes, on January 9, 1956, a committee from the Urban League visited with Mr. Holm and with Dr. Oberholtzer to discuss the boundary changes and also to discuss some other matters relating to the integration of teachers in the public schools and the fact that many—all of the Negro teachers were still housed—teaching in the East Denver area and in schools considered to be Negro schools.

Q. Who was present at that meeting? A. At that meeting there was a Mrs. Dickerson—I believe she was the wife of a Dr. Dickerson—Mr. Owens, Mr. [278] Sebastian Owens, Mr. Caldwell, Councilman Caldwell, Mr. Vance Austin, and I believe Mr. Charles Cousins also attended that meeting.

Q. Who was present from the School District? A. Mr. Holm and Dr. Oberholtzer.

Q. What was the date of that meeting? A. That meeting was on January 9, 1956.

Q. And had the proposed boundary changes been adopted by that time? A. No, we had heard that the boundary changes were to be considered on or about the 18th of January.

Q. Had you completed your investigation of the facts by that time? A. No, actually, I was still trying to make some determination as to the criteria. I did not have enough information to be sure that they were discriminatory, and I felt that I needed more information. At the same time, I had received a copy of a letter to Mr. George Brown, who was in the State Legislature, that had been sent to him by Mr. Frank A. Traylor, who was on the

School Board, and this was a letter responding to a letter that Mr. Brown sent to Mr. Samuels on the School Board, requesting information about the school boundary changes.

Q. Handing you what's been identified as Plaintiffs' Exhibit 338, can you state what that is? [279] A. Yes, this is a letter addressed to Mr. George Brown, Member, House of Representatives, State of Colorado, and it is signed by Mr. Frank A. Traylor, Vice-President, Board of Education. This is the letter—

[280] Q. Before you go on, can you give us the date of the letter? A. The date of the letter is January 16, 1956.

Q. And from whom did you receive it? A. Mr. Brown sent me a copy on or about the 17th, 1956.

Q. Is this that copy? A. Yes.

Q. Where has that been kept since? A. I have kept that copy in my files.

Mr. Barnes: I'd like to offer Plaintiffs' Exhibit 338 into evidence.

The Witness: You will note that that letter also repeats the criteria—

Mr. Barnes: If you will wait a moment, Mr. Traylor, for counsel to decide whether to object.

Mr. Creighton: The defendants have no objection.

The Court: 338 is received unless the intervenors object.

Mr. Brega: No objection.

The Witness: You will note that this letter repeats—

Mr. Brega: I'll object to the witness stating a response until there has been a question asked.

The Court: Sustained.

By Mr. Barnes:

Q. Mr. Taylor, does that letter contain the criteria concerning which you conducted your [281] investigation? A. Yes, the letter indicates that the changes were being made because of the growth of schools in population, overcrowding in some schools, availability of rooms in other schools, distances to schools, and the opening of a new junior high school. And, it closes with a quote which says, "Made without thought of segregation."

Q. What did you do in the course of your investigation of the application of those criteria? A. Well, I first decided that I needed to check the criteria and to get information that would relate to this criteria. So I went into the community with an automobile and I measured the distances between the schools involved. I discovered that the distances between Cole and Smiley was approximately 41 blocks or about 3.2 miles. And the distance between Cole and Morey was about 19 blocks, and about 2.3 miles. And also I measured the distances between the other schools involved, that is, the schools in the predominantly Negro area, and also took a look at the distances from the school boundary—the Cole school boundary to the beginning of the new boundaries. And also a look at the old boundary to see how far they had moved the other boundaries. I was also concerned about the halfway point between Smiley and Cole, the halfway point between East and Manual, and the same thing between Morey and Cole. I also checked through the Urban [282] League files for the population of schools to find out how many Negro students we had in the schools outside of the Negro area, and I also checked this by going to the principals in these schools.

Q. Which schools are you referring? A. The schools at Smiley, at Cole, and at Morey. I was able to get infor-

mation on the number of Negroes in Smiley which indicated that there were 46 Negroes attending Smiley at that time. I was unable to get accurate information on the number at Morey but made an estimation that it was a very small number based on the optional area that was available to Morey between Cole and Morey. I also checked the number of families—Negro families living east of York Street because the new boundaries were to begin at York Street. And I went to three of the realty companies and tried to get some estimation of the number of Negro families that had moved across York Street at that time.

Q. Why did you go to the three realty companies? A. These companies were quite active in attemtping to sell, to get Caucasians to sell homes in the area on the other side of York and also with large numbers of listings that were beginning to develop at that time.

Q. To sell homes to whom? A. Homes to Negroes in that area. I need to clarify the fact that up until this time there were very few Negro [283] families on the other side of York.

Q. Were you able by this procedure to determine how many Negro families there were between York and Colorado Boulevard?

Mr. Ris: Just a moment.

The Witness: It was difficult.

Mr. Ris: All right. Go ahead. I am sorry. He may answer. He said it was difficult. Move to the next question.

Mr. Barnes: I don't think it was finished.

The Witnes: It was difficult, but we estimated based on information we had—

Mr. Ris: Well now, at this point I am going to object to any estimate based on such information and information obtained from the realty companies. It's not credible.

The Court: Sustained.

Q. Did you make any other investigations? A. Yes, we took a look at the map that was being presented by the School District, and we noted that the map was in the form of an L, which gave the impression that the Cole District went as far east as Holly and Smith Road, and that it also extended as far north as 54th Street. And this looked somewhat strange, because the people who would have been living in the Smith Road-Holly area were closer to Smiley, and we wondered why they were being placed in the Cole [284] district. And so I drove into that area to find out, only to learn that there were no human beings in that area and that the School District in drawing the map had given the impression that the Stockyards and all of the industrial area to the north of 43rd Street had been included as part of the Cole district, to give the—I suppose give the impression of a large geographic area.

I also checked the bus routes and learned that there were buses going down 32nd Street in the direction of the Airport, and also down 28th Street. There was direct transportation coming near Cole from the area out and near the Airport on the north of 26th.

Q. How far west did those bus routes go, on 28th and 32nd Streets? A. I am not sure, but they went past both Manual and Cole, and where they terminated, I don't know.

Q. Did you find any similar bus routes from the area above 28th Street that went down to East High School? A. There were buses that could be used, but you would have

to transfer. In other words, children who were attending—who had lived in the area north of 28th Street all the way to the Airport could come down one of these streets and transfer to York Street and come up 16th Street and be at East. I also checked the distances from the area which is north of 28th Street all the way to the Airport and discovered that all of [285] the students or all of the families living in that area north of 28th Street actually lived closer to Manual than they did to Cole.

Q. Than they did to— A. East. I am sorry. —than they did to East. And, the type of measurement was the—any route they would have to walk, the shortest possible walking route or driving route by automobile or by bus.

Q. Did you conduct any further investigation? A. Yes, I went to the Board of Education building to see what I could find out about the criteria in terms of some written document, and I secured a written document which spelled out what the boundary changes would be. And I also copied from a document that was on the board near the maps the capacity for all of the schools involved, including enrollment. And it showed the following: Manual, with a capacity of 1600; enrollment, 1,066. East, with a capacity of 2462, with enrollment of 2558. Gove, with a capacity of 936; enrollment of 883. Smiley, with a capacity of 1446; enrollment, 1688. Morey, capacity 1478; enrollment of 1582. I was told by Mr. Holme that this information was being released to the Denver Post on the 16th of January, and on the 16th of January a copy of that appeared in the Denver Post as he had said.

Q. Did you make any further investigation? [286] A. Well, at this particular point I began to analyze the data, to make some determination as to whether the criteria that they had spelled out, if they were really utilizing this cri-

teria. It seemed to me that at that particular point we were not in a position to say to the School Board or to the School Administration that, "You cannot make boundary changes." We agreed, at least I felt, that they had every right to do this. But, it semed to me that if they were going to make these and had good criteria, they should be followed. We at that point scheduled a meeting at the Glenarm YMCA.

Q. What was the approximate—the date of that meeting? A. That meeting was scheduled, I believe, for the 17th of January.

Q. 1956? A. 1956, yes.

Q. And— A. And we invited to that meeting persons from the School Administration and by telephone we called Dr. Oberholtzer and Mr. Holme and invited them to attend, indicating that we felt that the community had a right to know what the criteria was and to raise questions about the changes being proposed.

Q. Did you extend any other invitations? A. Yes, invitations went to members of the School Board, also, and particularly to Mr. Traylor who had up to [287] that point, had shown, I think, the most interest, based on having met with some of the people who had been involved.

Q. Did you personally invite a Mr. Ketchem? A. Yes, Mr. Ketchem, who was in the Personnel Department, was also invited by me in person. I telephoned him and invited him to come to the meeting.

Q. And Mr. Bennett? A. No, Mr. Bennett was, I believe, invited to a second meeting that we had later.

Q. When this meeting was held—

Was this meeting held? A. Yes. The meeting was held on the 17th of January at the YMCA.

Q. And were representatives from the community there? A. Yes, approximately 125 people from the community attended.

Q. And who was there from the School District? A. No one attended from the School District.

Q. What else occurred at that meeting? A. At that meeting I made a presentation indicating that I had checked some of the criteria and that it seemed that the School District could be moving the boundaries only as far as the movement of Negro population at that time. Because the actions they had taken were not consistent with carrying out the criteria. Many of the people there raised [288] questions about it, and also they signed a petition—many of the people there signed a petition requesting that the School Board reconsider this and also hold more meetings.

Q. What was done with this petition? A. This petition was delivered by Mr. Lajean Clark, who was the chairman of our committee, to the Board president and was discussed, I believe, on the following day at the School Board meeting on the 18th.

Q. Were you present at the School Board meeting on the 18th? A. Yes.

Q. And you heard these discussions? A. Yes.

Q. What, if any, action did the School Board take that night on the proposed boundary changes? A. They agreed to postpone any action, and some of them—at least two or three, as I recall, said they felt perhaps more information was needed and that further discussion should be had on these.

Q. Did they postpone all action? A. As far as I know, they did. I don't recollect whether they took action at that meeting on the Gove-Hill part of this. It seems to me that occurred later on.

Q. What occurred subsequent to that January 18th meeting? [289] A. Another community meeting was planned, and the fact that we had anticipated a larger crowd at this

second meeting, it was scheduled for Manual High School in the cafeteria. And again we invited Dr. Oberholtzer and people from the School District to attend. And we particularly asked Mr. Holme to come out with his maps again to tell us why the boundary changes were as being presented.

Q. And approximately how many people were at that meeting? A. At that meeting it seems to me that there were about 150 citizens present. We had—Mr. Holme was there from the School District. Mr. Hindeman, Mr. Ketchem, Mr. Bennett. And fifteen school principals who had—who were principals of schools in the area, and Mr. Frank Traylor, the vice-president of the Board of Education, and 150 people, as I mentioned, or more.

Q. Did you present your findings from your investigation at that meeting? A. Yes, but the order of the meeting was such that Mr. Holme made his presentation first and he made the presentation utilizing the maps, telling why they had made the changes, again, discussing such things as distances and transportation, and indicating that this was the only thing that he had in mind, but also, he investigated the fact that only 150 students would be involved and that he couldn't understand why the [290] community was so upset about that; that it wouldn't affect that number of students. He made a thorough presentation and then responded to questions from the audience.

After this part of the meeting, I then presented a rebuttal to what he had said and raised questions about many of the points he had made.

[291] Q. Was this rebuttal based on the investigation that you had conducted? A. Yes, I pointed out that by this time the analysis that I had made had convinced me that the proposed changes were discriminatory and I based it on the following: I said that the schools that were over-

crowded were not being relieved of their overcrowdedness and the schools with empty seats would still have empty seats. For example, Smiley had an overcapacity of 242 students and Cole was under capacity by 371 students, and, yes, the optional area line had been extended only four blocks, four blocks away from Cole, and this corresponded more or less with movement of the Negro population.

Q. That is, that the area which would then be mandatory to Cole had only been extended— A. Four blocks, right, and that by extending this four blocks they picked up thirty-six of the Negro students who attended Smiley, leaving only ten Negro students in Smiley, and I raised the question as to why the old optional area between these two schools was ever placed five blocks from one school and eighteen blocks from the other school, because the optional area from Cole over to Smiley was eighteen blocks, and wondered why they had ever permitted students living in this optional area to go to Smiley when Cole was underutilized.

[292] Q. How far away from Cole might a student have been who attended Smiley? A. A person could have traveled as much as thirty blocks to Smiley.

Q. And lived how far from Cole? A. Eight or nine blocks.

Q. All right. A. I also pointed out that the school administration had not applied their criteria in this action because they had not relieved overcrowding at Smiley and they left a lot of empty seats at Cole, and I said in a sense this movement was increasing segregation at Smiley and also increasing segregation at Cole. I also pointed out that Morey was under capacity by 196 students and that what they were doing, they were creating more empty

seats at Morey in order to fill empty seats at Cole, and raised the question as to why they could not take the three high schools together and create empty seats in all.

Q. Junior high schools? A. The three junior high schools in question, and by doing this they would have empty seats in all three junior high schools and have integration in all three. I pointed out that the transportation to Cole from the area—from the optional area as such—

Q. That is the area between York and Cole? [293] A. Yes, that the transportation from this area was more convenient to Cole than to Smiley, especially for those young people who live north of 29th and 30th Street. The same was true with Manual and East. East was over capacity by 96 students and Manual had 534 empty seats, and the movement of the line betwen these two schools relieved the overcrowding at East by less than 50 students and left almost 450 or more seats empty at Manual.

Q. Did you make any proposals for alternative boundary lines? A. Yes, I pointed out that all of the students living north of 29th Street, all the way to the airport, lived closer to Manual than they did to East, had better transportation coming into Manual than to East, and wondered why they did not place the boundaries between the two schools in such a way that it would bring in a large number of white students into Manual to fill the empty seats there, creating integration in Manual and at the same time relieving the overcrowdedness in East and creating integration there.

Q. Did you make a similar proposal with regard to Cole and Smiley? A. Yes, I proposed that they take a look at the three schools in question and come up with some kind of lines between the three schools which would create empty seats in all three, and by doing so they could create

integration in all [294] three, more integration in all three. I also asked the question as to why they were only moving 150 students at this time when the main reason given for the changes were that they wanted to fill empty seats and to relieve the overcrowdedness.

Q. Now, at this meeting on January 31, did the representatives of the School District agree to make any concessions to your point of view? A. No, there was no offer of any concessions. Mr. Traylor said that they would take a look at this and the presentations made at this meeting and the questions raised by the people who had attended and that we could be assured that the School Board would give every consideration to this before they made a decision.

Q. After this meeting on January 31, was any portion of the proposal changed? A. Repeat that, please?

Q. Was any portion of the proposed boundary line redrawn to your knowledge subsequent to the January 31 meeting? A. Yes, after that meeting the school district held a series of small group meetings that took place early in February, at which they discussed the proposed boundary changes with small groups. I attended a meeting I believe on the 8th of February and I noticed at that time that the maps had been changed, that they had now removed the stockyards [295] and the Smith-Holly area from the maps which reduced the geographic size of the Cole area from a large "L" type area to a smaller type area, which was about two-thirds the size of the Smiley area, and by doing this also for the Manual area, they had a geographic area for Manual that appeared to be about half the size of the East area.

Q. Did this change affect the considerations of capacity that you have discussed earlier? A. No, because actually

the area that they had removed from the maps did not include any people, so it was just a matter of—it appeared smaller on the map.

Q. Mr. Traylor, you have testified that you lived in the 2100 block on Vine Street. Are you able to say what other Negro families lived in that area when you were there? A. Yes, I had a neighbor was was Mr. Alexander, who I believe is a judge here now. He was a next-door neighbor. In the next block above us was Councilman Caldwell, and it was interesting to note that in drawing the new boundaries Mr. Caldwell had not been disturbed. In other words, he remained in the optional Morey area and also lived in the optional East area, East-Manual area.

Q. In the course of your investigation and the meetings to which you have testified, did you become familiar with other people who lived in the optional area between York and Race? [296] A. Yes, in fact, I knew many of the people already, because in my activity with the Urban League, I had been in contact with them quite frequently on other matters relating to the League, so they were no strangers.

Q. Did you come to know the racial composition of that area? A. Yes, by 1956, the area west of York was predominantly Negro. By this time, I would say, just about all of the white families with children had moved from the area and at this particular point I don't recall more than one or two white families who lived to the west of York.

Q. What was the composition of the area when you first arrived? A. When I arrived in Denver in 1952, the area east of Race Street to York was predominantly white and the Negroes had moved up to about Race, with the exception of a few families, and I would say that York and Vine

and the street—Gaylord, I guess it is—between the two streets, was really where many of the Negres who could afford to purchase homes were moving.

Q. Do you recall in this series of meetings that you have described whether Councilman Caldwell was at any of those meetings? A. Yes, I believe that Councilman Caldwell was at both the meetings at the YMCA and also at the—at Manual High [297] School and also in at least one meeting we had with school officials at the Administration Building.

Q. And what is his race? A. He is Negro.

Q. Do you recall if at any of these meetings Senator George Brown was present? A. Yes, I believe that Mr. Brown was also at these committee meetings and was at at least one of the meetings at the Board of Education Building.

Q. When you discussed the capacity utilization of Manual High School, upon what figure did you base that capacity? What was the figure that you had for 1956? A. The figure that I had for 1956, well, were the figures that I had secured from Mr. Holme, which stated that the capacity was 1600, and that the enrollment was 1066.

Q. Now, had you had any occasion prior to this discussion beginning in 1956 to inquire into the capacity of Manual High School? A. Yes, in 1952, when I came to Denver, there were discussions going on in small group meetings throughout East Denver, meetings that had been encouraged by the School District, to provide community participation in the development of Manual. There was discussion then as to what size Manual would be, once it was completed.

Q. That is the new Manual being constructed? [298] A. The new Manual, yes.

Q. And was the capacity of the new Manual discussed at those meetings? A. Yes, and we received information from the school officials which indicated that the capacity might range anywhere from 1,000 to 1,250, and one of the points they made was that they could not be sure about this because they wanted to be sure that it was an outstanding high school, that it had the kind of space that a new high school would have, that it would be a modern high school, and I think at that time they said it was probably the most modern school in the country and they wanted to be sure to have enough laboratories and other type facilities to make this really an outstanding high school.

Q. Were boundaries also discussed at those meetings? A. Yes, boundaries were discussed, because there were many of us who were concerned about the fact that the old Manual as such was predominantly Negro and we felt that building of the new high school would provide an opportunity for Manual to become integrated because with new facilities and with a new look we felt that the white families who we felt had rejected the old Manual could not resist coming in to the new school that the School Board was saying was one of the best in the country.

Q. With whom were these discussions held? [299] A. We met with various school officials, including Mr. Holme, Mr. Ketcham, school principals. Some of these meetings were held at the old Manual. Some were held at Shotter AME Church and some at private homes.

Q. Do you recall the approximate dates? A. These meetings took place in late 1952 and early 1953.

Q. And was this topic of boundaries for the new Manual discussed at more than one or several of these meetings? A. Yes, we discussed boundaries quite frequently and we

were told that the school district had to take the overall boundary problem in the future and certainly Manual's boundaries will be considered when this took place.

Q. What were you told would be the capacity of the new Manual then? A. As I mentioned, we had figures that ranged from 1,000 to 1,250.

Q. What were the figures you were given in 1956? A. In 1956, we were given the figure 1,600, and I recall I said to Mr. Holme at that time that I was quite surprised to learn that Manual had a capacity of 1,600, because, remembering that we had talked about something around 1,250, and he indicated that they had looked to the future, they were concerned about providing for the [300] anticipated population increase.

Q. Turning your attention back to the 1953 proposed boundary changes, do you recall whether there was any publicity on the meetings that you discussed? A. Yes, beginning in late December and continuing through February, there were several articles in the Denver Post, and fewer in the Rocky Mountain News, about the proposed boundary changes.

Q. Handing you what has been identified as Plaintiffs' Exhibits 339, 340, 341, 342, 343, and 344, can you identify what those are? A. Yes, 339 is a page from the Denver Post which includes, under the date of July 11, 1956—which has an article called, "Schools Face Segregation Suit."

Q. Before you testify as to what they say, if you can just identify them, do you know where that newspaper cilpping came from? A. Yes, this particular paper, which is dated July 11, was mailed to me by Mr. Clark after I had left Denver.

Q. All right, would you identify the others? A. 344 is an article which states that, "Two Civic Groups Probe School Racial Charge."

Mr. Creighton: Objection, Your Honor. He is merely asked to identify, not read it.

The Court: Very well, just state what date it came [301] out.

The Witness: The date is not on there, Your Honor.

Q. Is that from your files? A. Yes.

Q. Was it kept in the same place that the others were kept? A. Yes, I kept all of the news clippings that I took from newspapers at the time.

Q. All right, what is the next one? A. The next is an article from the Denver Post dated July 12, 1956.

Q. That's 342? A. 343.

Q. 343, and the next one? A. The next one is from the Denver Post, January 18, 1956, 342. The next is 341. It is from June 21, 1956, Denver Post, and this is a copy of the new school boundary maps in the Denver Post, January 13, 1956.

Q. And that is Exhibit 340? A. 340, yes.

Mr. Barnes: I believe that the authenticity of the exhibits has been stipulated to by the original defendants, and I offer them into evidence.

Mr. Creighton: Your Honor, it is true that we have [302] have been able to agree that they are true clippings from newspapers indicated. We object to the admission of all of them, generally, on the ground that this is not the proper way to prove the facts stated in a newspaper, if this is what they are being offered for, and in particular on some of these exhibits there are additional writing on them not in the original clippings. In other words, the objection is as to their competency.

Mr. Brega: Your Honor, we have the further objection that they state conclusions of the writer and editorializing of the facts, if they be facts, and are the rankest type of hearsay.

Mr. Barnes: These are not offered for the truth but to show there was newspaper publicity at the time of these meetings, to show there was publicity of these boundary changes.

The Court: I will receive them for that circumstantial purpose, going to whether the board and the staff were mindful of these considerations at this time. We are not taking them on any testimonial basis.

(Plaintiffs' Exhibits Nos. 339, 340, 341, 342, 343, 344 were received in evidence.)

Q. Mr. Traylor, turning your attention to your activities on behalf of the Urban League, did you have anything to do with hiring, the proposed hiring, of Negro teachers by the [303] Denver Public Schools? A. Yes, from the—almost from the time that I arrived in Denver in March of 1952, I was in touch with the personnel office for the school district for the purpose of trying to get them to employ qualified Negro teachers and also to get them to place Negro teachers already employed, those to be employed, in schools outside of the Negro area.

Q. Did you meet with any representatives of the school district to express your interest in this subject? A. Yes, I met—in the four years that I was in Denver, I met with Dr. Oberholtzer on several occasions, with Mr. Holms many times more, and perhaps talked to Mr. Ketcham on an average of once a week or more.

Q. Would that be Mr. Holme, rather than Mr. Holms? A. Holme, yes, sir.

Q. H-o-l-m? A. Yes.

Q. When you met with Dr. Oberholtzer, what did you propose?

Mr. Ris: May we pin this time down, timewise? He just said he met with him many times.

The Court: Yes, surely.

Q. Did you have specific proposals to make with Dr. Oberholtzer? A. Yes.

[304] Mr. Ris: Same objection, if the Court please.

The Court: The objection is that you have not placed it at any particular time.

Mr. Barnes: I am sorry.

Q. Can you identify when you met with Dr. Oberholtzer? A. At this time I can't pinpoint any specific date, but I met with Dr. Oberholtzer within the first three months after I arrived in Denver to initiate discussions with him as to the matters I mentioned.

Q. Where did you meet with him? A. At the school Administration Building.

Q. Who else was present? A. On the first occasion I met with Dr. Oberholtzer alone. On another occasion I met with him with the Urban League Committee.

Q. Who was that? A. That included the people I named earlier, Mrs. Dickerson, Mr. Charles Cousins, I believe a Mrs. William Grant, and other people I just can't recall now, but we had a committee of about seven or eight people.

Q. And this meeting occurred early in 1952? A. The committee meeting occured later in 1952. I met with Dr. Oberholtzer alone—

Q. On the first occasion when you met alone with him, did you have specific proposals about hiring of Negro [305] teachers? A. Yes, we expressed the concern that at that time there were less than thirty Negro teachers employed in the Denver school system and I pointed out to him that we had in the Urban League files many persons who appeared to be qualified for teaching in the system and that we felt that it was fair to give these people an opportunity for employment.

Q. What qualifications did you point out that these people had? A. These people had college degrees with majors in elementary or secondary education. Some of them had master's degrees. Others had—and some of these, too, had years of experience in teaching in other parts of the country.

[306] Q. What was Dr. Oberholtzer's response? A. His first response was that Denver was making progress, that he felt that they had to move slowly; that they had to be careful about this; that he was not sure that the white community was ready to accept Negro teachers, and he also expressed concern that he did not want any school in the Negro area to become—to have a faculty that was all Negro. And he was careful to point out that, at that time, at Whittier they did not permit the number of Negro teachers to reach more than 50 percent because they wanted an integrated faculty. I pointed out to him that this did double harm to the Negro applicants; the fact that they would not hire Negro outside of the Negro area and then limit the number they would hire in the Negro area meant that equal opportunity was not even possible, even in the second instance.

Q. Now, were these same concerns discussed at the second meeting which you have described with the Urban League Committee? A. Yes, many of these were discussed and we got some of the same answers.

Q. Did you point out your concern in any other way during the time you were here? A. Yes, I interviewed more than 150 persons in the four years who were deemed to have at least the minimum [307] qualifications required by the school district. And all of these people were referred to the Personnel Office of the Denver school district.

Q. How were they referred? A. They were referred to Mr. Ketchum's office. I had been to see Mr. Ketchum. I had indicated our interest and our concern, and he had said he wanted to cooperate, so he asked us to refer any qualified persons to his office to get applications.

Q. How many had you referred, approximately, in the time you were here? A. I would say in excess of 150.

Q. In this four-year period? A. Yes.

Q. And approximately were hired? A. Well, when I left Denver in 1956 the number had increased from less than 30 to, I believe, 59 or 60. So in four years we had doubled the number as such but the number started at less than 30. And all of these were still—were located in the so-called Negro areas.

Q. Handing you what's been identified as Plaintiffs' Exhibit 410, can you state what that is? A. This is an Urban League fact letter, March, 1956.

Q. Was that letter prepared in your office? A. Yes, this fact letter was prepared in the Urban [308] League office.

Q. Turning your attention to the article on Page 2 of that letter, which discusses Negro employment in the Denver Public Schools, where did the information for that

article come from? A. This information came from the Urban League files because we kept an up-to-date, day-by-day listing of Negro teachers employed in Denver. In fact, any time the school district hired a Negro teacher I was informed by the Personnel Office that they had hired one person or two persons and where they were being placed. Then, too, the fact that we had so few—that every time a Negro was hired in the Denver system, it was news.

Q. Was it a part of your business, your job, to keep track of these placements? A. Yes, I had the responsibility of keeping track of the placements because, as the educational and vocational counselor I was concerned about filling opportunities that might become available.

Q. Have you reviewed the list which is contained there for the accuracy for the identification of the placement of those teachers? A. Yes, I believe so. This would be correct.

The Court: What is the exhibit number?

Mr. Barnes: 410, Your Honor.

[309] I offer Exhibit 410.

Mr. Creighton: No objection.

Mr. Brega: Your Honor, I believe the plaintiffs must be offering the second page of the exhibit. I believe the remainder of that exhibit has matters which would not pertain to this proceeding and I wonder if they want to offer the entire matter or just—

Mr. Barnes: We are prepared to stand by the whole document. We are concerned about offering into evidence particularly that one article to which he has referred.

Mr. Brega: We don't object to the second page, but we don't believe that the rest is material to this proceeding.

Mr. Barnes: I think it's accurate, Your Honor.

The Court: Pardon?

Mr. Barnes: I think that's accurate, Your Honor. The second page is the part that is material to this case.

The Court: Well, are you going to separate the face sheet from the second page?

Mr. Barnes: I could do that.

The Court: It will be received then, 410.

(Whereupon, Plaintiffs' Exhibit 410 was received in evidence.)

The Court: Mr. Kerr will do it for you; putting [310] the mark on the second page and return the first page to you.

I'll tell you what we can do. We can merely cross out the first page as being immaterial and that way you can identify the document better.

Is that all right?

Mr. Barnes: That's fine.

Q. Turning your attention to Plaintiffs' Exhibit 410, Mr. Taylor, how many teachers—Negro teachers are shown there to be in Cole Junior High School? A. Twelve.

Q. And how many in Smiley Junior High School, if any? A. Smiley is not listed.

Q. Were there any in Smiley Junior High School? A. No.

Q. Were there any in East High School? A. No.

Q. How many were there in Whittier Elementary School?

Mr. Brega: Your Honor, I object to this. This is merely going through the exhibit and asking—

The exhibit speaks for itself.

The Court: Overruled. We will permit them to point up the things. I assume it's not going to take too long.

[311] Q. You may answer. A. Eleven.

The Court: Where now?

A. At Whittier Elementary School.

Q. Mr. Traylor, do you know whether your wife applied for a job in the Denver Public Schools? A. Yes, she did.

Q. When was that, if you know? A. In 1952, shortly after we arrived in Denver. I came in March and she came after school closed in New York City where she was teaching and it was during the summer—early summer of 1952.

Q. What kind of a school was she teaching in in New York City? A. In a secondary school.

Q. Was she awarded a contract by the Denver Public Schools after her application, if you know? A. No, she was told that—

Mr. Brega: Object, if the Court please, unless we establish that this witness was present, I believe it would be hearsay because it would have to be what she told him.

The Court: True, and I don't see that one instance of this sort has very much probative value, Mr. Barnes.

[312] Mr. Barnes: All right.

Q. I have one question to fill in a gap that I may have left out, Mr. Traylor. Turning your attention back to the 1956 proposed boundary change, you indicated that you thought that 36 of the Negro students in Smiley Junior High School would be taken out of that high school by the proposed change. Is that a correct statement of what you testified? A. Using the number present at that time and applying the boundary changes going into effect, we pointed out that the 36 who lived on this side would be eliminated.

Q. Lived on what side? A. On this side of York; on the west side of York. I do believe we were told by the school district that those students already in Smiley would not be affected but we pointed out that those same families could no longer send children into Smiley, so the future result would be the same.

Q. When did you leave Denver again? A. I left Denver in May of 1956, I believe, and came back for a short visit and then left.

Q. Had the boundary changes been accomplished by the time you left? A. No, they had not, as I recall. They had made decisions which affected Gove and Hill but no decision had [313] been made, as I recall, on the other schools.

Mr. Barnes: No further questions.

Cross-Examination by Mr. Creighton:

Q. Mr. Traylor, you have mentioned frequent conversations with Mr. Holme. Is that Mr. Peter Holme? A. Yes.

Q. Do you know whether he is now alive? A. I believe he's deceased.

Q. And also conversations with the then board member, Mr. Traylor. Do you know whether he is now alive? A. I do not, no.

Q. Mr. Traylor, in your testimony under direct examination, you were referring to some notes, were you not? A. Yes, sir.

Q. When did you make those notes? A. These notes were prepared recently from other notes I had in my file.

Q. What file is this? A. It's a file that I kept which I called school boundary material that I began collecting in 1955, I suppose in the Urban League. It was a personal file which included many of the exhibits you have here.

Q. And did you bring that file with you? [314] A. I have that folder, yes.

Q. As well as your notes prepared from your personal file? A. Yes, but not all of them.

Q. Not all of your basic file? A. No, because some of the material I presented here came from the Urban League file. These were changes that I had kept in a personal file.

Q. Now, what was your initial duty with the Urban League when you came in 1952? A. I was educational and vocational guidance counselor and industrial relations secretary with the Urban League. I was responsible for trying to develop equal employment opportunity for Negroes in Denver through the Denver Urban League program and also had the responsibility for interviewing people interested in jobs in which we were trying to fill.

Q. Did your responsibilities and efforts extend beyond the public schools so far as employment was concerned? A. Oh, yes.

Q. The City and County of Denver? A. The City and County of Denver, yes, private enterprise.

Q. Tramway? [315] A. Yes, sir.

Q. Were you making efforts in all of these areas to get the employers, as the case may have been, to employ more Negroes? A. Yes.

Q. What kind of success were you having in the area with the City and County of Denver during that period? A. I would say that we were having minimal success; not as much as we thought we should achieve. I think the overall atmosphere here was one of discrimination against minority group people and one of the things we said quite frequently to the City and County of Denver and to the Board of Education was that you should provide leadership; that, as a public employer, if you provide the leadership, that will help the private citizen come along.

Q. Are you suggesting that the public employers were more responsive than private enterprise? A. I would say on the whole, yes, with the exception of the school district.

Q. And what about the school district? A. The school district did not move rapidly. In fact, we received what I felt was a rather reluctant desire to move forward. As indicated by the fact that in 1954, after the Supreme Court decision, I had a meeting with the school board officials and pointed out to them that [316] now is the time for Denver to integrate its schools, because legally—

Q. Well, now— A. Let me finish, please. I felt that legally that Denver had a responsibility, as the schools in the South did, and that was discussed with them.

Q. Were you talking about employment? A. Employment, integration, school boundaries, the whole thing, because it all ties together.

Q. So you pointed that out in 1954 following the Supreme Court decision? A. That's quite true.

Q. Do you regard the increase from 30 to 60 in the years you were here in the employment of Negro teachers according to your testimony minimal in terms of proportion? A. I would call it somewhat less than minimal for the fact that during that period we had a tremendous increase in

terms of numbers of qualified people coming into Denver and it was significant, the fact that many people coming into Denver were what I considered to be middle-class people, who came here with an educational background, who came here with a desire to be a part of this community. And I referred to the Denver Public Schools in the four years I was here more than 150 people, and only, I would say, less than 40 were accepted or even given an opportunity, [317] and that does not include many of the people who did not through us, but came directly to the school board for application.

Q. And you were in touch with Mr. Ketcham, I believe, weekly during this period? A. Yes, any time we had a person who had just finished college who was out here for the summer, I would pick up the telephone and call Mr. Ketchem and say, "I've got a good person here in the office. I'll be sending him over."

Q. Did you follow up to determine how many of the people you referred actually completed applications? A. Yes, in fact one of the things we did—we said to the people, "When you go to the school district, report back to us and let us know how they treated you. Let us know if you got an application blank. Tell us who talked with you. Let us know how you were received." Because we had gotten some complaints that when they did not get the right person or that they were shunted aside and given some sort of a short answer.

Q. Of course, part of your job was to put them in touch with the right person, wasn't it? A. That's right, yes.

Q. Did you get reports back as to any failures to [318] hire of those who applied? A. Yes, I would say that a large majority of the people who went there would call in and say—

Mr. Brega: Just a minute. I object to the response of what they said.

The Court: Do you object to it, too?

Mr. Creighton: No, that's my question.

The Court: Overruled.

The Witness: Would you state your question again, please?

Q. In your follow-up procedure did you get reports back from the people you had sent over as to whether or not they were hired? A. Yes, they would call in and say they had received an application blank or they had been greeted and they were told that there were no openings and they would be contacted when they did have openings, and that kind of thing. On a few cases, they had had a chance to have a more in depth discussion at which time their background may have been gone into and I would suppose that some of the people who were eventually employed were the persons that came out of the files that the school district developed from the people we sent there.

Q. Now, were you sending people over at all times of the year? [319] A. I would say, without question, because we had applicants coming into the office right around the clock. I would say—we had probably a larger number going over in the late spring, early summer.

Q. But you were getting reports back that one reason people you had referred were not hired at least at that time was that there were no openings, is that correct? A. That is correct. But we questioned that for the simple reason that we also knew at that time that the school district, especially during the early part of the year, they were recruiting in Texas, Oklahoma and Arkansas and other points of the South because we had been informed that they were

leaving on recruitment trips and one of the questions I raised over and over with Mr. Ketcham was the fact that we had qualified people here in Denver. "Why not give them a chance?"

And I often got the response that "We don't have any openings for Negro teachers because we're not ready" in a sense "to move them out of the Negro area."

Q. Is that what Mr. Ketcham said? A. That's right.

Q. Do you know whether Mr. Ketcham is alive? A. Not that I know.

[320] Q. Mr. Traylor, I don't think you gave us the date at least at the time you described the meeting at which about 150 people appeared. It was in the Manual High building, and you remember— A. That was January 31, 1956.

Q. All right, Mr. Traylor, you described the optional area as an old optional area. Do you personally know how long the Smiley-Cole optional area had been in existence in the form it was in when you came here? A. No, I don't know the exact time it was in existence when I came, but I do know that at my first look at it, it raised questions in my mind, and that is I could not understand how the School District could permit students who live within four or five blocks of a school with empty seats to go thirty-some-odd blocks to another school, and, of course, right away it brought to my mind that this could have been racial, and after making my check and after the 1956 incident I had no question in my mind that it was discriminatory.

Q. In forming that conclusion of yours, did you check for information regarding other optional areas in other parts of the city? A. Yes.

Q. Were you aware that there were other optional areas

all over the city? [321] A. Yes, I was. In fact, we took a look at the optional area which was between Gove and Smiley, which was a smaller area with very few youngsters in it, and one thing we said to Mr. Holme—

Q. Where was that, please? A. North of City Park here someplace. I am little hazy now, but it is to the west of City Park. I am sorry, south of City Park and to the east portion of that.

Q. And this was in the period of your investigation in 1955-56? A. Yes, sir.

Q. And did you find optional areas in the south part of Denver? A. Yes, we found optional areas between—

Q. West part of Denver? A. I did not look at the area on the other side of the river, other side of—what is called—the other side.

Q. West of the Platte River and Cherry Creek? A. Well, I am not—I don't recall the names of these streets now, but I am talking about the area that's going toward the mountains. We did not look at that area.

Q. Did you look at the south part of Denver? A. Yes, if that includes Gove and Hill and parts of Morey.

Q. Well, how about south of Cherry Creek? Did you [322] check for optional areas in that part of town? A. Isn't that a part of either Hill or Gove at that time? I don't know what you have here now. I mean, you may have more junior high schools now, but would that not have been in that area at that time?

Q. I am just inquiring whether you checked south of Cherry Creek for optional areas. Do I understand you did not? A. Do I understand—

The Court: Well, we will agree, I think. We will take a recess, about twelve minutes.

(The court recessed from 3:32 o'clock p.m. until 3:46 o'clock p.m.)

The Court: Mr. Creighton.

By Mr. Creighton:

Q. Mr. Traylor, when you were discussing your remarks at the January 31 meeting with Mr. Holme and others, you said you proposed, as I recall, as an alternative making the area north of 29th at the senior high level mandatory Manual. Was that the proposal? A. No, I suggested that in terms of fair boundaries and in view of the criteria that they had spelled out, that is distances between schools, convenience of transportation, desire to integrate a school, that a fair boundary line would be closer to go down 29th or 28th Street to the airport, because all of those youngsters lived closer to Manual, and [323] I questioned why they had ever been permitted to go to East.

Q. Now, was that the only specific boundary line you proposed at that meeting? A. No, we suggested that there were many things that they could consider. First, they could just carry out the total action, the criteria that had been laid out for these boundary proposals.

Q. Was that the only boundary change you proposed? A. I just said no, because of what I am saying—

Q. Did you propose any specific boundary changes at any other time?

Mr. Barnes: May the witnes be permitted to finish his answer to the prior question?

The Court: Yes, he may answer.

A. (Continuing) The suggestion—

The Court: You interrupted him. He had more to say, I think.

A. (Continuing) The suggestion they carry out the criteria—

The Court: He wants to list the ones. You asked if there were any others.

Mr. Creighton: Your Honor, I asked only with respect to a boundary, and he started on other criteria. I think he was not responsive and going beyond the question.

The Court: I can't tell yet.

[324] A. (Continued) If they carried out the criteria as proposed, they would have new boundaries in several schools, and we suggested that was one thing they might do. That is, take total action, not take token action to eliminate a few Negro kids. Fill all the empty seats, create equality in terms of empty seats in the schools. Let East have some empty seats also, not all of them being in Manual.

Q. You said that before, but was the 29th Avenue or 28th Avenue proposal your only specific boundary proposal? A. No.

Q. Did you make any other specific boundary proposals at the January 31 meeting? A. We said that there were many things that they could do and the results would be new boundaries that would create an integrated school district. We didn't spell out where the lines ought to be. I merely made reference to the fact that if they were really concerned about one element of the criteria, which was distances to schools, that if they looked at their map they

would discover that for years they had permitted white students who lived to the north of 28th to go into East when they really lived closer to Manual.

The Court: I think you can well afford to not persist further with this question. I think we have the answer.

Mr. Creighton: I think we have the answer. No [325] further questions.

Mr. Brega: I only have a couple, Your Honor.

Further Cross-Examination by Mr. Brega:

Q. Mr. Traylor, had you had occasion to speak to the Board prior to 1956 about boundary changes? A. In 1952, when I first came here, I mentioned that there were several meetings we had regarding Manual High School, the new Manual, and during that period and '52, early '53, we had discussions with school personnel about boundaries for Manual and the possibility of setting up boundaries at Manual in connection with other schools so that there would be integration in whatever school Manual was going to be next to.

Q. Well, you were aware, then, of the problem that during this time Denver was sustaining a rapid growth in student population? A. I was aware of the fact that in one meeting we met with Dr. Oberholtzer and raised the question about building some additional elementary schools in East Denver and he told us at that time that the population was going down, that they didn't anticipate any further growth in East Denver. We pointed out to him that Denver was such an attractive place that there was going to be a possibility of additional people coming into Denver to live, especially [326] Negroes.

Q. Was there a great influx of Negroes from outside of Colorado in 1956? A. I wouldn't say a great influx, but quite a number, yes.

Q. These people settled in the north, northeast part of the city for the most part? A. Yes, but you can probably note that the number was probably not as great as may have seemed because of the empty seats in Manual, the one school Negroes could go to except a few in the East.

Q. You say it is the only one? A. One high school, except a few in East.

Q. Isn't it a fact if they lived in the East attendance area, they could have gone to East? A. Yes, sir.

Q. And if they lived in the South attendance area, they could have gone to South? A. Yes, sir.

Q. Same with North? A. Yes, sir.

Q. During the time you were making your studies, were you aware of the fact that during 1951 to 1955 there were 23 school buildings built in Denver? A. No, sir.

Q. Were you aware of the fact that between '55 and '56 [327] that the school population of Denver increased 5,000? A. I have heard that figure.

Q. These create problems for school capacity and utilization? Now, during the time that this boundary change was proposed for East-Manual, at the time of the proposal, East was running over capacity, wasn't it? A. That's true.

Q. And one of the purposes of this area that was to be ceded was to eliminate, to alleviate some students at East? A. That's correct, but we also wanted to know why they didn't want to eliminate—

Q. I did not ask you what you wanted to know. A. I am answering your question, though.

Q. The— A. The question we raised—

The Court: Hold up, just a minute. You will get an opportunity to comment.

The Witness: I am sorry.

The Court: On redirect. This is cross-examination, so limit your answer to the question asked.

The Witness: Okay.

Q. Now, at the same time that we dealt with this, we were taking a piece off of Smiley and ceding it to Cole, were we not, in '56? [328] A. That's correct.

Q. And at that time Smiley was over capacity, wasn't it? A. That's correct.

Q. And Cole was under capacity. Now, at the time that you submitted your plan to the Board, it was your purpose, was it not, to make the boundary changes for the sole purpose of increasing the Negro representation in the various schools that you were interested in? A. That's not true.

Q. Was that one of your main purposes? A. That was one of the reasons, yes, sir.

Q. Now, when you sent the teachers over to be interviewed by the administration, do you have any knowledge of how many applications were made in the year of 1956 to be teachers in the City and County of Denver School District? A. No, I don't.

Q. Do you know how many teachers that were not black were turned down by the school administration? A. I have no way of knowing.

Q. Do you know that figure for 1955? A. No.

Q. '54? A. No.

Q. '53? [329] A. No.

Q. Now, during this period of time that you were in Denver, you were aware, were you not, that the city and the school district were co-terminus? In other words, they have

the same district. If Denver annexed a piece of property, it automatically became a part of the school district? A. I am not sure of that.

Q. Were you aware of the fact during this period of time in the fifties and sixties that the area population of Denver doubled and that the school district doubled during that time? A. I know there has been a tremendous increase in the population. I don't know how much.

Q. Did you make any studies in that regard? A. We took a look at the increase of the population we were concerned about.

Q. Just in that area? A. That's right.

Q. Did you take any in the west side of Denver? A. No.

Q. Annexation in the south? A. No.

Q. Or in the east? A. No.

Q. Now, in your Exhibit 401—do you have that?

[330] The Court: You say the geographic area of Denver doubled in what period of time?

Mr. Brega: I have the figures, 58 point square miles and 98.

The Court: In what years?

Mr. Brega: From 19—I will give the Court the exhibit.

The Court: Oh, you mean—I didn't mean to interrupt what you were doing.

Mr. Brega: I have it here, which will be offered at a later time.

The Court: All right.

Q. Do you have 401? A. This is 410.

Q. Exhibit 410. Now, Mr. Traylor, considering the listing of Negro personnel which is on the right side of 410,

do you know what the racial breakdown of the Whittier School was in 1956 at that time? A. I would say that it was over 75 percent—maybe even higher—Whittier.

Q. All right, and what about Manual? A. Manual, as I recall, was close to 75 to 85 percent.

Q. In 1956? A. Yes.

Q. Would you be surprised to learn that it was 42 [331] percent? A. I would be.

Q. In 1956? A. I would be.

Q. You would be? A. I would be.

Mr. Brega: Do you have Exhibit 401?

Mr. Ris: I may have it here.

Mr. Brega: Do you have it?

The Court: His surprise is of no probative value, as I view it.

Q. All right, let me hand you 401, so you can just check with me. Do you know what the composition as far as the races were of Cole in 1956? A. My impression was that it was in the neighborhood of, as I said before, 70 to 80 percent.

Q. All right, 401 shows it was 40 percent. Now, was it your impression and statement to the School Board that they should not place Negro teachers in schools that were predominantly white? A. No.

Q. So you have no objection to the Negro teachers in 1956 at this time being throughout the school system? A. This is what we wanted.

Mr. Brega: Your witness.

[332] *Redirect Examination by Mr. Barnes:*

Q. Directing your attention, Mr. Traylor, to Exhibit 401, is there any indication on that exhibit of the Hispano enrollment? A. No, let's see—I don't see it.

Q. Is there any indication, therefore, on that exhibit of the total minority enrollment at those schools? A. I can't tell from here, no.

Q. It is not on that exhibit, is it? A. No.

Q. Take your time to look at it, if you need to. A. Well, this says Negro enrollment.

Q. So there would be no indication on that exhibit whether or not the schools listed there are predominantly Anglo, would there? A. No.

* * * * *

[348] * * *

Paul Klite (resumed).

Mr. Greiner: A few questions, Dr. Klite.

Redirect Examination by Mr. Greiner:

Q. In cross-examination by Mr. Ris, a number of factors were listed by counsel which may or may not have been [349] considered as criteria for boundary changes. Do you recall that list of items which were considered? A. Yes.

Q. Or might have been considered? I believe one of the items which Mr. Ris did not mention was the question of principal recommendations. Did any of these boundary changes, do you know, have their genesis in recommendations by principals? A. The Board minutes of 1952—I forget the exhibit number—concerning the Harrington-Colum-

bine-Stedman optional zones indicated that the initiation for these was the school principals.

Q. Also, in response to Mr. Ris' cross-examination, Dr. Klite, I believe you mentioned the fact that between, I believe it was 1948 and 1956, the racial and ethnic data developed by you and reflected in certain exhibits came from what source? A. From the principals' reports that were made available to us by the defendants for those years. These were membership enrollment and racial and ethnic data collected from each school, each semester, by the principal.

Q. There were two reports, one for the first and one for the second semester, is that correct? A. That's correct.

Q. Now, and the principals also recommended boundary [350] changes in certain instances? A. Yes, the instance I just mentioned.

Q. Now, Dr. Klite, do you know whether or not the principals knew what the racial composition of their schools was? A. Seemed likely that they did.

Q. Dr. Klite, you will recall testimony regarding the attendance area for Gove Junior High School? That was the arm reaching eastward along East Colfax? A. Yes.

Q. That's depicted in Exhibit 20? A. Yes.

Q. Does that arm still exist today or have the boundaries of Gove been changed? A. They have been changed.

Q. Do you recall what schools, for example—what was the elementary school north of Colfax that was picked up in that corridor when it existed? Ashley? A. The western portion was Ashley.

Q. And what junior high school does Ashley feed to, do you recall? A. Smiley.

Q. You will recall on cross-examination by Mr. Jackson that an error was discovered in Exhibit 376? A. Yes.

[351] Q. That pertained to what school, Denison, do you recall? A. I believe it was Denison.

Q. Do you recall what the total enrollment is at Denison? A. No, sir, I don't.

Q. Do you recall whether Denison has been depicted by the defendants as the twin of Barrett? A. That might be the case.

Q. And Barrett is a small elementary school? A. Barrett has a capacity of less than 500.

Q. Now, Doctor, with respect to Exhibit 376, would the miscalculation or the inclusion of Denison in Exhibit 376 substantially affect its accuracy? A. There are approximately 33,000 Anglo elementary students in Denver. If Denison had 500 students that were all Anglo, this would affect the percentage of Anglo indicated in Exhibit 376-R by one and one-half percent.

Q. Do you happen to know what the capacity of Denison is? A. No, I don't.

Q. Finally, Doctor, if you would direct your attention to Exhibit 83, which I believe was in front of you, on the cross-examination by Mr. Jackson you were asked some questions concerning the highest test scores and the third quartile test [352] scores in certain selected schools, do you recall that? A. Yes, I do.

Q. Doctor, turning first to the report contained in Exhibit 83, at the third grade level, what does that show for the first quartile at Ashland School grade three? A. It shows that, for example, in the words study skills test, the first quartile percentile level is four.

Q. Four percent? A. Four percentile.

Q. What does it show then for the median? A. Twenty-two.

Q. What does it show for the third quartile? A. Thirty-eight.

Q. And what about Barrett Elementary School? A. In, for example, the language test, the Q-1 score, the first quartile, is two.

Q. What does the two mean? A. It means that 25 percent of the students are below that level.

Q. And what does the second percentile mean? A. It means that 98 percent of the students nationally are above that level.

Q. All right, would you turn your attention to Garden Place in the third grade? What was the Q-1 score at Garden Place? [353] A. The range on different tests—from language, the lowest value on the chart, the Q-1 is one percentile.

Q. And what is the Q-3? A. Twenty-two percentile.

Q. Now, with regard to Harrington Elementary School, Doctor, what is the Q-1 score at Harrington in the third grade? A. Well, for the arithmetic comprehension test, the Q-1 is one percentile.

Q. And what is the Q-3? A. Twenty-eight percentile.

Q. By turning your attention to grade 5 in Exhibit 83 for Bryant-Webster, what's the Q-1 percentile of Bryant-Webster? A. The lowest score is in Arithmetic Test 5, where the Q-1 is the fifth percentile.

Q. And what is the Q-3 in that test? A. Thirty-one percentile.

Q. And, finally, Doctor, at grade 5 at Mitchell, what is the Q-1 percentile? A. Mitchell has one of the lowest average scores. The highest Q-1 percentile is in, paragraph meaning. It is 9 percentile.

Q. What's the Q-3 in that test? A. Thirty-four. The lowest Q-1 is in several subjects [354] tied at the third percentile, science and arithmetic applications.

Q. What are the Q-3's in those subjects? A. Sixteen and twenty-one percentile, respectively.

Mr. Greiner: We have no further questions, Your Honor.

Your Honor, I am sorry, I do have one other question.

The Court: All right.

Q. You were asked by Mr. Jackson as to the comparability of the tests administered every three years in the triennial testing program. Do you recall those questions? A. Yes.

Q. Referring to Exhibit 379, you will recall this morning you read certain excerpts from Exhibit 379? A. Yes, sir.

Q. Did any of those excerpts relate to comparisons being made by the School District itself? A. Yes.

Q. And what were the nature of those comparisons, Doctor? A. As I recall, they were comparing the—

Mr. Jackson: I am going to object, if he can't recall what it is. If the exhibit contains it, let the exhibit speak for itself.

[355] The Court: Well, he is trying to recall. Do you remember?

The Witness: Yes, in the Baker 1956 test summary, for example, is stated that there had not been a 1953 test to compare with. In another part of that exhibit under Morey it says that comparing the '65 data with the '62 data at Morey is difficult because of a changing population, and in 1959 I think for Cole it compared it to '56 data.

Q. So, in other words, the school district did make comparisons? A. Yes.

Q. Every three years? A. Yes.

Q. The current test with the prior year's test? A. Yes.

Q. And the school district did find them comparable evidently? A. They made the comparison.

* * *

[356] *Redirect Examination by Mr. Jackson:*

Q. Doctor Klite, in your perusal through Exhibit 83, just a moment ago, where you were discussing various percentile rankings at Ashland, Garden Place, Harrington, Bryant-Webster and Mitchell, these are purely random selections? A. No, sir.

Q. What were they? A. They were picked to show the extremes, just as picking the range of one student at 99 percentile is an extreme.

Q. We found earlier this morning, Dr. Klite, in some predominantly Anglo schools we had children achieving at first percentiles? A. That's correct.

Q. Meaning that 99 percent of the children in the United States were above those? A. Well we didn't know if it was those or him or her.

Q. Well, those achieving in the first and 99th percentile? A. That's right, there is a wide range.

* * * * *

[371] * * *

GERALD P. CAVANAUGH, a witness called by and on behalf of plaintiffs, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Greiner:

The Court: Give us your name and address, please.

The Witness: Gerald P. Cavanaugh, 10601 West 35th Place, Wheatridge, Colorado.

By Mr. Greiner:

Q. Mr. Cavanaugh, are you presently employed by the School District No. 1? A. I am.

Q. And what is your current occupation? A. Supervisor, Testing Services.

Q. And how long have you held that position? A. Since January, 1967.

Q. Can you give us just a brief resume of your duties and responsibilities as chief of the testing service? A. The general responsibilities involve the assistance and selection of tests, ordering of tests, distribution, in-service education of teachers administering these tests; [372] arranging for scoring of tests, reporting the results back to buildings, publishing reports, and assisting faculties in interpretation of results.

Q. Now, prior to January of 1967, were you also employed by the Denver Public Schools? A. Yes, sir.

Q. In what capacity? A. Immediately preceding January, 1967, I was acting principal, Lincoln Elementary School. Prior to that I was supervising teacher assigned to the Department of General Curriculum Services.

Q. Can you give us the dates of that tenure, please? A. May I refer to my notes?

Q. Certainly. A. I was originally hired as a teacher in the schools in March, 1949. I was assigned as a teacher on special assignment to the Department of General Curriculum Services, September, 1960. I was assigned as a supervising teacher in the same department, August, 1962; acting principal, August, 1966; supervisor, January, 1967.

Q. Now, when you were in the Department of Curriculum Services, did your work there concern the administration of tests? A. That was part of my responsibility, yes.

Q. Can you describe in a little more detail, please? [373] A. My total responsibilities?

Q. Vis-a-vis testing. A. I worked under the direction of the Director of Guidance Counsel and Evaluation and assisted him in a program of administering the testing program similar to my present occupation.

Q. Now, does your current occupation—do you aid in the administration of achievement tests in the Denver Public Schools? A. Not actual administration but assisting teachers administering, yes.

Q. Does your office also supervise the ordering of tests from the national publishers? A. It does.

Q. Is this done under your direction? A. Yes, sir.

Q. Now, how is it decided each year—and I will draw your attention first to the annual testing program—how is it decided which tests will be administered in the annual testing program? A. We have teacher committees—I should say just committees—which include teachers from all grade levels. We also have principals represented on these committees. It's approximately a one-third primary teachers, one-third intermediate teachers, and one-third administrators, [374] principals and assistant principals.

We discuss the programs that have preceded and tests that are to become available on the market and make recommendations to the instruction committees of the schools as to the program that we feel should be followed. The committees on instruction then act on these and then make recommendations to the superintendent and his staff as to whether this is the program that should be followed.

Q. In the development of the lists of tests which may be used in the annual testing program, does that list include

alternate tests? In other words, does an individual school have any discretion in the tests which will be administered annually? A. Yes, some tests are optional.

Q. Is there always a list of mandatory tests which must be given in each school? A. Yes.

Q. Now, ordinarily, Mr. Cavanaugh, a child in the Denver Public Schools going from kindergarten through the twelfth grade is tested approximately how often for achievement? A. Under the present program for achievement they are tested each year in the elementary schools; once minimum in the junior high; once minimum in the senior high. During survey years, we will possibly involve [375] youngsters in two testings in their junior high experience or senior high experience.

Q. Now, how long has that current program which you have just described been in effect? A. Two years. This is the second year. There is one more year to go on this particular program.

Q. Now, prior to the implementation of that program, was the normal Denver Public School student tested more often or less often than you have just described? A. It has varied from year to year. At one time the history of testing in Denver—there was considerable testing done of children twice a year, beginning the year and at the end of the year.

Q. Is there a variance at a particular grade level each year in the annual program as to the subjects which are tested for? A. Some of the subtests vary from battery to battery, level to level. Yes.

Q. So, in any given year, in comparison to the previous year the same subjects are not always tested, is that correct? A. Not always, that's correct.

[376] Q. Now, approximately in the last, say, five to seven years, Mr. Cavanaugh, how many different achieve-

ment tests have been administered in the Denver Public Schools? A. We have relied primarily on the Stanford achievement tests, the California achievement tests, and the Iowa tests of educational development.

Q. Prior to 1950, did the district administer more tests than the major ones which you have just described? A. Not to my knowledge, no, sir.

Q. There was not a greater variety of tests employed? A. I don't believe so.

Q. Are you familiar with the triennial testing program? A. Yes, sir.

Q. When was that program instituted? A. 1950.

Q. What was the objective of that program, if you know? A. I believe that the superintendent felt that it was essential that we sample a large population within the system, and it was recommended that we check all youngsters at Grades 3, 6, 9 and 12, and evaluate curriculum at these particular levels.

Q. As opposed to the objective which you just [377] described for the triennial program, what are the objectives of the annual program? A. Test results are reported back on the annual testing program and are provided to the individual teachers for numerous reasons: one, to evaluate curriculum, to evaluate teaching techniques, to assist in the counseling and guidance of youngsters and to assist in parent conferences. Basically, this constitutes the major—

Q. Are some of those same objectives or purposes employed with respect to the triennial program; for example, the use of counseling? A. Yes, sir.

Q. And what about the use of the materials or the test results in terms of parent-teacher meetings? A. Yes, sir.

Q. Now, it is my understanding that the annual testing

is done primarily in the fall of each school year? A. This was at one time the schedule, in the fall of the year, yes, sir.

Q. Was that to enable you to make changes in curriculum that might be required by the test results for that same school year? A. This was a part of it, yes, sir.

Q. Is that still the policy of the administration? A. No, the major testing is done in the spring of [378] the year.

Q. So the curriculum changes are implemented in the fall? A. That's right, there is some time in the summer months to study the results.

Q. Does the Denver Public School system—let me start first with your office—use the results of the triennial achievement testing for comparative purposes? Do you compare the test results in one test year with the prior year at particular schools? A. Within the office, from time to time, yes.

Q. What publications does the Office of Testing or the Denver Public School system publish with respect, first, to annual test results? Is there any general distribution of those test results publicly? A. To individual buildings, the results are returned, but as far as a publication, no, in the annual program.

Q. Now, you have before you what has been marked for identification as Plaintiffs' Exhibit 82, entitled, "The Denver Public Schools Look at Themselves." Can you identify that document for us? A. Yes, sir, this is a publication of my office.

Q. And is that publication based upon the results of a triennial test? A. It is.

[379] Q. For which year? A. 1968.

Mr. Greiner: Your Honor, I don't believe that this exhibit is in evidence at this point. We would offer it on behalf of the plaintiffs.

Mr. Jackson: No objection.

The Court: It will be received.

Mr. Brega: No objection.

(Whereupon, Plaintiffs' Exhibit 82 was received in evidence.)

Q. What year does that Exhibit 82 pertain to? A. 1968.

Q. I believe you said the triennial program began in 1950? A. Yes, sir.

Q. Were you involved in testing in 1950 when the program was instituted? A. As a classroom teacher, yes.

Q. Did you participate in any of the decisions that led up to the decision to begin the triennial testing program? A. No, sir.

Q. So you were not involved with the Department of Testing at that time? A. No, sir.

[380] Q. Now, since 1950, for each of the triennial tests, has a publication similar to Exhibit 82 been published by the school district? A. It has.

Q. Now, would you refer, please, to Exhibit 82. As I understand it—let me ask you first, does that exhibit give any individual school data on achievement test results? A. No, sir.

Q. What is depicted in Exhibit 82? A. Citywide results. To elaborate a bit, the Grade 3 chart, for example, shows the total picture and a bar graph of the test results of 7,358 youngsters taking the word-meaning test, for example. The same thing is true, numbers varying from subtest to subtest, Grades 3, 5; farther back in the book we get into Grade 11.

Q. Now, I believe you said that that exhibit is prepared in your office? A. It is.

Q. Can you give us an idea of how many copies of Ex-

hibit 82, for example, were printed? A. I don't know the exact number. I can give you an approximation.

Q. All right. A. Ten thousand.

[381] Q. Now, what is done with the triennial test reports such as 82? For example, is a copy of it distributed to the principal at each school? A. It is.

Q. What about to each of the teachers in each school? A. Yes.

Q. So, there is a copy made available to each teacher? A. Yes.

Q. What about the distribution to, for example, parent-teacher organizations? A. It is not a normal course of action. They do request them, however, and they are sent.

Q. We have what? Around 4,000 teachers in the Denver Public Schools? A. Yes, sir.

Q. And about 116 principals? A. Yes.

Q. What generally happens to the other 5,000 copies of these reports? A. They are sent to other school systems throughout the nation on an exchange basis. They exchange similar publications with us.

Q. Now, I believe you said that the annual testing program does not produce an exhibit such as Exhibit 82, [382] is that right? A. Yes, sir.

Q. Now, does the the administration, Mr. Cavanaugh, have any policy with respect to requiring in each school a meeting such as a parent-teachers meeting, at which the results of the triennial program are reported to the parents at a particular school? A. I know of no such policy.

Q. Is it a practice? A. This is my understanding.

Q. Do you know? A. No, sir.

Q. Have you ever participated in such a program? A. I have.

Q. But you don't have any idea of how general such

programs are throughout the district? A. Not an accurate one, no, sir.

Q. Now, in the triennial testing program, Mr. Cavanaugh, over the succession of the three-year periods are the same children receiving these triennial tests? A. No, sir.

Q. Why not? A. Because of the use of the Grades 3, 5, 9 and 11 on a three-year basis will not pick up these individual kids for retesting over and over.

[383] Q. So, in each third year it is a different group of children being tested? A. For the most part, yes.

Q. Is it possible, Mr. Cavanaugh, in the annual testing program for a teacher to request that a test be administered that is on the list of approved tests for the annual testing program? A. Yes, sir.

Q. What procedure is followed in that regard? A. The request is made directly to my office.

Q. Is there any deviation from the standard tests applied in the triennial program? A. No, sir.

Q. Those are completely standardized? A. Yes, sir.

Q. There is no discretion at the individual school level? A. No, sir.

Q. You were a principal at Lincoln School during what period of time? A. January, 1967, until August of '67.

Q. During that period of time, did you receive the results of a triennial test? A. '67, no, sir.

Q. You did receive the results of an annual test? [384] A. Yes, sir.

Q. As a principal in that particular school, Mr. Cavanaugh, did you use the results of the annual testing in any kind of a group parent-teachers meeting? A. No, sir.

Q. Has it ever been your practice while employed in the Denver Public Schools to use the annual test results for such group meetings? A. No, sir.

Q. What about the triennial test results? A. Yes, sir.

Q. When was the first such occasion, do you recall? A. I don't recall.

Q. Would it have been back in the early 1950s, for example? A. I would have said in the '60s.

Q. As a result of your receipt of the results of the annual testing program at Lincoln School, did you authorize any changes in the curriculum at that school? A. I did not.

Q. What was the racial composition of Lincoln when you were there? A. Primarily Anglo.

Q. What factors did you consider in reviewing those annual test results which led to your decision not to [385] change the curriculum? A. Basically, it was my feeling as a principal that the staff was doing a professional job of instruction and were utilizing materials appropriate to the subject and the results were basically satisfying, in my own eyes.

Q. Now, you were a teacher in the Denver Public School system during what period of time? A. 1949, when I was first hired, until 1960.

[386] Q. Now, during that period of approximately eleven years, Mr. Cavanaugh, during that time period, did you as a teacher receive results of the triennial testing program in your school? A. Yes, sir.

Q. And what use did you make of those test results as a teacher? A. We reviewed, as a faculty, the results that were sent back to us. We drew comparisons of our achievement with those schools of the citywide picture.

Q. In other words, you would refer to an exhibit such as 82? A. Yes, sir. I did some of the self-evaluation as to the type of job I felt I was doing as a teacher.

Q. What were your bases for that? The test results of your children? A. This is right. And, these results in this

particular school were presented to the
a parent-teachers association meeting w

Q. At what school was that? A. Sm
School, 42nd and Shoshone.

Q. Were you at Smedley during that
I was.

Q. In evaluating your performance
Cavanaugh, did you take into considerati
of expectancy which had been establish
ticular class? A. This was one of the c

Q. How was that level established, do
that particular time, if I recall correctly,
tion of the I.Q. of the group and the tim
the test was administered.

Q. Now, during that eleven-year period
arithmetic you would have received the re
ennial tests? A. This is four, I believe.

Q. One in 1950? A. 1950, 1953, 1956
was assigned to another job, I am sure I
own experience in 1960.

Q. Now, do you recall whether in each o
the results of the annual or the triennial
were reported at a parents—a group pare
as you have described? A. Yes, sir.

Q. In each instance? A. Yes, sir.

Q. Was the question of the level of exp
to the parents at these group meetings?

[388] Q. Was it explained how that
was determined? A. I don't recall.

Q. Do you recall whether or not the par
ing were told that expectancy levels mig
schools? A. Yes.

Q. What were they told in that regard?
fect that the general ability of the group
used to set the expectancy. This is why c

this school may appear different than the citywide expectancy.

Q. Now, with respect to your receipt of triennial test results as a teacher, Mr. Cavanaugh, did you also receive the triennial test results of any other individual school? A. No, sir.

Q. Did you ever seek such data for comparative purposes? A. No, sir.

Q. You were only conterned then with how your class achieved in terms of the expectancy which had been set for it? A. This was one of the criteria, yes.

Q. And the other criteria which you used was the [389] average citywide achievement level? A. That was another criteria, yes.

Q. What were the other criteria? A. My own professional judgment as a teacher; what I thought the kids should be able to do.

Q. Now, during that eleven-year period, then, you received no other comparative test results with respect to other individual schools, is that correct? A. No, sir.

Q. Now, when you were a principal at Lincoln, did you ever receive comparative test results with respect to achievement in other individual elementary schools in the district? A. No, sir.

Q. Was there any kind of a citywide composite published on the basis of the annual testing program? A. No, sir.

Q. So, in evaluating the results of the annual testing program, what were the criteria which you would, as a principal use in evaluating the performance of your school? A. Previous years' experience with tests and test results.

Q. Were the same tests administered year to year? A. Basically the same, yes.

[390] Q. What other factors? A. Again, professional judgment.

Q. So you had no citywide average to use as a guideline at that point? A. This is right.

Q. Now, you took on your present position in January of 1967? A. Yes, sir.

Q. And when was the next triennial test program administered? A. During the 1967-68 school year, spring of 1968.

Q. Now, as I understand it, Mr. Cavanaugh, every three years a publication such as Exhibit 82 has been published with respect to the triennial test results, is that correct? A. Yes, sir.

Q. And in each instance those publications give only the citywide results? A. Yes, sir.

Q. Now, in the fall of 1968, was a decision made to publish comparative school data? A. The decision was reached to publish the test results from each school in alphabetical order for the grades tested.

Q. Now, prior to that decision, what had been the [391] policy of the school administration? A. Comparative results were not released to the general public. The individual school's results and the citywide results were returned to the individual school alone.

Q. Were comparative test results given, for example, to the Board of Education prior to the fall of 1968? A. No, sir.

Q. Are you familiar with the reasons underlying that decision not to publish comparative data? A. It was the philosophy of the administration at the time that this would be detrimental to the esprit de corps.

Q. Did you participate in the decision leading to the publication of comparative test results in the fall of 1968? A. I played a minor part in it, yes.

Q. What factors were considered in the decision to change the school administration's policy? A. The open

records law which was one of the reasons for giving this consideration.

Q. Can you explain that, please? A. It was my understanding that the state legislature passed a law—

Mr. Jackson: I'm going to object to this [392] witness's characterization of the law. If he knows what factors were considered in arriving at the decision, this is fine, but I would object to any editorial comments, Your Honor.

The Court: Well, he can say, I suppose—if he knows of his own knowledge that one factor was the enactment of this law.

What are you objecting to? His description of what it is?

Mr. Jackson: Yes, Your Honor. Any comments on the law.

The Court: Well, you're not going to have him discuss in detail what the law provides, are you?

Mr. Greiner: No, Your Honor. I'm just interested in how the law relates to the decision.

The Court: All right.

A. It was my understanding that on passage of this law, that test results became public information. And in discussing this with the administrative staff the decision was made to release these figures from all schools.

Q. Now, as I understand it, the release of this information did not include an individual student's test result, is that correct? A. This is right.

[393] Q. What types of results actually were released? A. The interquartile distribution of scores for each subtest administered at Grades 3, 5, 9 and 11.

Q. So no individual child's test score was singled out and published? A. This is true.

Q. What other factors were considered in making the administration's policy with respect to reporting comparative data? A. I don't know of the other considerations given.

Q. Now, do you recall, Mr. Cavanagh, that in the triennial program administered in 1965 at the fifth grade level, that there was a standardization employed as to the expected level of achievement? A. A norm adjustment was used at fifth grade level that year, yes, sir.

Q. As I understand it, the effect of that adjustment was to standardize expectancy in all the schools at that particular grade level, is that correct? A. Yes, sir.

Q. And that was established at what? 5 point— A. 5.7.

Q. 5.7? A. Yes, sir.

Q. Now, did you participate in any parent group [394] meetings wherein the results of the 1965 triennial test program was the subject of the parent group meeting? A. Yes, sir.

Q. Did you participate at any such group meeting at any of the schools with the Park Hill area? A. Yes, sir.

Q. In January or February of 1966, can you identify the schools where you spoke in Park Hill? A. No, sir.

Q. Do you recall any particular meeting? A. Stedman.

Q. And when did that meeting take place? A. I don't recall the date.

Q. Would it have been early in 1966? A. This is possible.

Q. About at what point in the school year do you receive back the graded achievement tests in the triennial program? A. We will start receiving them in the latter part of May and this will continue through part of June. This is the usual time.

Q. Now, the triennial test year was 1965, is that correct? A. Yes, sir.

Q. When was that test actually administered? [395] A. April, I believe it was.

Q. Of 1966? A. No, of 1965.

Q. I see. Now, with respect to the meeting—was it Stedman Elementary School? A. This is one I recall, yes, sir.

Q. Was there anyone else present at that meeting from the school administration? A. Yes, Gil Kruder. I don't remember all the people that were there. The principal of the school was there; some teachers, and members of the community.

Q. Had this meeting been called for any particular purpose? A. I was told—

Mr. Jackson: Objection to what he was told. If he knows he can answer.

The Court: Overruled.

A. The purpose of the meeting was to explain test results to the community.

Q. Was this just a normal parents' meeting? Was this a special meeting called for that purpose? Do you know? A. I don't know.

Q. About how many parents were there? A. Two-thirds of the auditorium was filled.

[396] Q. Did you make a presentation to this parents' group? A. I did.

Q. What was the nature of that presentation? A. Interpreting triennial test results; Grades 3 and 5, for Stedman. A comparison with the citywide picture.

Q. In the course of that presentation did you use any audiovisual aids? A. I did.

Q. What were they? A. I used an overhead projector with transparencies and I believe some 35-millimeter slides.

Q. Did those slides include pictures of the test results at Stedman? A. They did.

Q. Did they also include pictures of the citywide test results? A. They did.

Q. And were those results then compared? A. They were.

Q. What, if anything, was said, Mr. Cavanagh, with respect to the normalization or normalizing of the fifth grade of that test year? A. At Stedman?

Q. Yes. [397] A. There were questions from the audience, the teachers, as to why this was done, what did it mean, and which I attempted to explain to them.

Q. Did your presentation include an explanation of what the effect of normalizing had been upon the Stedman achievement scores? A. I believe so, yes.

Q. What was that effect, do you recall? A. In comparing test results with grade level of 5.7, grade points were added to the actual achievement scores to bring about this comparison.

Q. Did you get any audience response after you made that explanation? A. Yes, sir.

Q. What was that? A. Again, questions as to why this was done and was it done citywide, did all schools have this done.

Q. Was there any difference, Mr. Cavanagh, that you were aware of in the effect of the normalizing process if we were to compare, first, a low-achieving school with a relatively high-achieving school? Can you explain to the Court how normalizing might affect each of those schools' achievement levels? A. The low-achieving school would have grade points added to their actual scores. The high-achieving school [398] would have grade points subtracted from their actual scores.

Q. Now, in the course of your duties in the testing office, Mr. Cavanagh, do you know whether or not your office conducts any kind of an extensive survey of the testing results in each of the schools of the district? In other words, do you try to evaluate the performance of schools? A. We do not.

Q. Do you make—other than the publications such as

Exhibit 82, you don't prepare any comparative analyses? A. No, sir.

Q. Are you aware in your office of whether or not in each of the years in which tests are administered certain schools constantly achieve at a low level? A. Yes, sir.

Q. How are you aware of that fact? A. All of the test results come back through my hands.

Q. So they are observed? A. They are observed, yes, sir.

Q. Do you know, Mr. Cavanagh, whether there are certain schools in the district which, for years, have been in fact low-achieving schools? A. This is true.

[399] The Court: Before we leave this standard expectancy approach, is there any other purpose—What you suggested is that it minimizes the differences.

The Witness: Yes, sir.

The Court: And it undermines the effectiveness of the testing, I suppose, as a—

The Witness: In my estimation, yes, sir.

The Court: Well, what is the justification for it?

The Witness: This was one way recommended by the publisher for comparing test results from various schools, high-achieving and low-achieving, with a single reference point, that being the grade point or the grade level at the time of the test to 5.7 in this case, and the tables for doing this norm adjustment were provided by the publisher.

[400] The Court: I still don't see why they would—what it would furnish. I mean, what the value of it would be. I mean, they weren't doing it for any diabolical purpose, I don't suppose.

The Witness: No, sir.

The Court: Well, then, why didn't they just want to present the raw results?

The Witness: It is my understanding that the publishers were recommending this type of approach for the purpose of examining youngsters on a thinner band of expectancy. Basically, what this would do would take the scores of schools at this level and the scores of schools at this level and pull them into a narrow perspective rather than having such divergence of scores, where you have a very low and a very high, to compare between the two systems with different expectancies. This involved adjusting expectancy as opposed to adjusting scores.

The Court: Well, maybe I will see the purpose.

The Witness: This was used for one year, Your Honor, and that's it.

Q. It was also used only at one grade level, is that correct? A. This is the only grade level for which this was available.

[401] Q. I see, and that was the fifth grade? A. Yes, sir.

Q. In the 1968 testing program, did the publisher also make a normalizing procedure available? A. It was available, yes, sir.

Q. Was there any discussion in the testing office in the Denver Public Schools as to whether that would be employed again in the 1968 tests? A. None whatever.

Q. Had there been any discussion or evaluation of the employment of the normalizing process in the 1965 tests? A. Yes, sir.

Q. Can you give us some indication of what was discussed? A. Basically, it was found that this particular way of reporting was not satisfactory in the eyes of the teachers, the administration, the public, nor the office of testing services.

Q. So, it was decided to drop it? A. Yes, sir.

Q. Would you refer just briefly to Exhibit 379, which are the annual test reports, triennial test reports, excuse me, the summary for Wyatt School, Grade 5—

Mr. Jackson: Excuse me, Your Honor, could I inquire as to which exhibit we are on? I did not catch [402] the number.

Mr. Greiner: This is 379.

Q. This is the 1965 report for Wyatt School, Grade 5, is that correct? A. Yes, sir.

The Court: What year is that?

Mr. Greiner: 1965.

Q. Now, could you read what the summary is there for Wyatt School? A. Yes, sir. "The grade placement chart shows achievement well above the national norm by pupils at all levels of ability. Most scores reflect the success with which the staff is imparting basic academic skills. When comparison is made with the national norm, the fifth graders of Wyatt are well prepared to meet the academic challenge in the sixth grade. The percentile chart reveals a relatively low percentile XA. However, the median percentile scores indicate that these pupils are achieving well above expectancy in most academic areas. Strengths are noted in social studies, arithmetic applications and arithmetic concepts. These results reflect a carefully planned program of instruction for all levels of ability. The staff and community may be well pleased with the results."

Q. What community is referred to there? [403] A. Wyatt Elementary School.

Q. The community served by that school? A. Yes.

Q. And is that the way the term "community" is used throughout the triennial test reports? A. Yes, sir.

Q. So, you equate the term "community" with whoever happens to live in the school subdistrict attendance area? A. Yes, sir.

[403] * * *

Cross-Examination by Mr. Jackson:

Q. Mr. Cavanaugh, directing your attention again to the 1965 test program and the norm adjustment process that was utilized in Grade 5, am I correct in understanding that this process was utilized throughout the entire school district for that particular grade that year? A. Yes, sir.

Q. It was not limited to any particular group of schools? A. No, sir.

Q. You testified that the expected achievement in Grade 5 was established at 5.7? [404] A. Yes, sir.

Q. And how was that established? A. By the publisher.

Q. And by publisher, who do you mean? A. Harcourt-Brace-World, Incorporated, New York.

Q. Is this the firm that publishes this test and from whom you order it? A. Yes, sir.

Q. After you order the test from this publisher, do you make any changes in it? A. The test itself?

Q. The test itself. A. No, sir.

Q. Now, at the same time did the publisher describe the process by which these norm adjusters would be used? A. This information appears in the manual for the administration of the test, which is sent to all teachers who will administer the test.

Q. And was the same factor, the same adjustment factor, applied uniformly throughout the school district? A. To fifth grade, yes.

Q. How was that factor determined? A. By the publisher's table.

Q. And how did you know which factors within that table you would use at a particular school? [405] A. The median I.Q. for the group tested determines the factor to be used. If I might explain the table, what it looks like, on the left-hand side there is a column of I.Q. ranges, and across the top of the column are the subtests, and then next to the I.Q. range, under each column, is the factor to be used in norm adjusting.

Q. Was there any school in Denver whose norm was not adjusted? A. No, sir.

Q. And, again, this was because this was to comply with the instructions and requirements of the test publisher, is that correct? A. Yes, sir.

Q. At the same time, did the test publisher indicate that this was an experimental program on their part? A. No, sir.

Q. Did they indicate to you the reason for the establishment of the norm adjustment process? A. No, sir.

Q. Is it possible to compare the 1965 fifth grade results with any other test year without making some conversion? A. No. sir.

Q. And is this because of the adjustment that was employed in reporting the fifth grade test results for that [406] year? A. Yes, sir.

Q. Now, the 5.7 grade level which was utilized as the expected achievement, citywide, that was established, was it not, by the fact that the test was being given in the fifth grade in approximately the seventh month of the school year? A. Yes, sir.

Q. And that's what the 5.7 refers to? A. Yes, sir.

Q. And is this the only consideration given for the arrival at 5.7 as the expected achievement? A. Yes.

Q. Now, I believe you testified, Mr. Cavanaugh, that not only the testing office but the school administration, the principals, teachers, as well as community were all unhappy with the effects of norm adjustment, is that correct? A. Yes, sir.

Q. And this was not dropped at the insistence of any particular school or any particular result that was achieved thereby, but just because of the general ineffectiveness of the program? A. Yes.

Q. Do you know whether or not at the same time that [407] the Denver Public Schools utilized the norm adjustment process for Grade 5 in 1965, any other school systems in the country utilized it? A. I am not aware of any.

Q. And it is available or was available for 1968 but was not utilized by your office? A. This is correct.

Q. I would like to direct your attention to Exhibit 83, Mr. Cavanaugh, and in particular to that section of Exhibit 83 indicating Grade 5. Are the test results shown in there in two different fashions? A. They are for Grades 3 and 5, yes.

Q. And they are shown in percentile bands as well as— A. Grade equivalence.

Q. —grade equivalence? A. Yes, sir.

Q. Directing your attention to the back of that exhibit, immediately following the reporting of—the Iowa test, educational development, are reported in percentile. Immediately following that percentile ranking for the Iowa test, is other information contained within that exhibit? A. Yes, sir.

Q. Would you tell us briefly what this it? [408] A. We referred to it as community information, listing median

family income, based on the 1960 census, mean class size, daily attendance pupil-staff ratio and pupil mobility.

Q. And are those factors related to the schools in the Denver system that were tested that year? A. Yes, sir.

Q. And how are they related, Mr. Cavanaugh, by alphabetical listing? A. By rank order.

Q. What do you mean by rank order? A. From high to low or from low to high, depending on the category being considered.

Q. They relate to specific factors of the community information section? A. Yes, sir.

Q. Now, in 1969, in the annual testing program, was a citywide average furnished to each school?

Mr. Greiner: I am sorry, Your Honor, I did not catch the year.

Mr. Jackson: '69.

A. I don't recall. We sent back listings for each school. I believe we sent some for the city, but I really can't say.

Q. I believe you testified that at the time that you [409] were a teacher you did not receive any citywide results at the annual testing program, is that correct? A. This is right, yes, sir.

Q. Is that process still being followed? A. Yes.

Q. What was your main function in examining test results for your students during the time that you were a teacher? A. Well, again, the main reason for looking at them was to do some self-evaluation and take a look at what was being accomplished in teaching fifth and sixth-grade youngsters. Using these results along with the other criteria I have mentioned; I attempted to improve the instruction within my own classroom.

Q. You were more interested in the achievement of your pupils than in your standing in relation to the community at large? A. Yes, definitely.

Q. We find throughout the exhibits which have been introduced relating to testing various levels of expected achievement for schools, depending upon the manner of reporting, whether on a percentile band or grade equivalent band. How are these expected achievements arrived at? A. Can I give a historical background of this, as to how it developed?

[410] Beginning with the 1950 survey year, the expectancies were arrived at by examining the median I.Q. for the group at the time that the test was administered, following a basic formula, and this continued through the years. The last reevaluation of the tables was in 1962, and in 1968 we used the actual scores achieved by pupils of similar I.Q. groups as the expectancies. Prior to '68, a single expectancy was arrived at. An example, a group of youngsters at fifth grade with a given I.Q., the median might have an expectancy of 5.3, so a line was drawn across a bar graph at 5.3. This was the median. One year above and one year below this established a band of expectancy. This was the same for all subtests.

In '68, we went to this national picture, where the expectancies may vary from one subtest to the other, based on the actual achievement of youngsters across the nation.

Q. Now, you read a moment ago, Mr. Cavanaugh, the summary of the Wyatt results, Grade 5, in 1965, from Exhibit 379? A. Yes.

Q. Now, did the results for Grade 3 of Wyatt in 1965 appear in that exhibit as well? A. Yes, sir.

Q. And was there any norm adjustment used in the [411] third grade in 1965? A. No, sir.

Q. Now, the Grade 3 results at Wyatt in '65 were reported as grade equivalencies, are they not? A. Yes, sir.

Q. And the test in 1965 had eight subparts? A. Yes, sir.

Q. And at that time the median achievement of the students at Wyatt exceeded the expected achievement in six of those eight subtests, did they not? A. In one, two, three, four—

Q. Met or exceeded? A. Surpassed in five and met at one in the median, yes.

Q. The upper band, for example, in Test 5, word study skills, shows a Q-3 of 5.4, is that correct? A. Yes, sir.

Q. Now, there is no indication of any achievement above that level on this graph, is there? A. No, sir.

Q. In terms of marking? A. No, sir.

Q. In fact, 25 percent of the students at Wyatt achieved even above that level, did they not? A. Yes, sir.

[412] Q. And the same is true throughout the graph, that 25 percent of the students were achieving at a level higher than the upper portion of the bar? A. Yes, sir.

Q. And again, there was no norm adjustment used in the third grade at that time? A. No, sir.

The Court: Who writes those glowing comments about how good they are?

The Witness: Teachers are brought in during the summer usually following the survey and are asked to analyze these, write, and after writing they are submitted to—well, at the present time they would be submitted to me from the 1968 survey.

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[413] * * *

Redirect Examination by Mr. Greiner:

Q. Mr. Cavanaugh, I thought you told me that the school district does in fact compare test results from the triennial program? A. I did.

Q. Are you saying those comparisons are invalid? A. No, sir.

Q. What did you mean in answer to counsel's question, then? [414] A. He asked me—I believe the question entailed comparison year to year from the comparisons contained—if different editions of the tests were used, and my response was that it's difficult to compare one edition of a test with another such as M, I believe he said, in 1962 which was the 1953 edition of the test, with the 1965 or 1968 editions which are 1963 publications.

Q. Well, then, in reporting the results of tests such as are reflected in Exhibit 379, are not such comparisons in fact made by the school district? A. Comparisons are made? Yes.

Q. From one— A. —year to the next.

Q. One prior three year test to the current one? A. This is true.

Q. Now, you mentioned the conversion—that a conversion would be necessary, Mr. Cavanaugh, with respect to the fifth grade achievement level of Wyatt in 1965. Calling your attention to that fifth grade achievement level as reported in Exhibit 379, where is the—is it the mean achievement or the median achievement? A. Median.

Q. All right. Where is the median achievement, for example, in word meaning? A. In word meaning, it's at 6.9.

[415] Q. And the expectancy was 5.7, is that correct? A. Yes, sir.

Q. Now, if we were to convert that 6.9 score, Mr. Cavanaugh, what would the result be? A. I don't have the tables available. I can give you an approximation if that's acceptable.

Q. Please do. A. Approximately 5.7—roughly 5.7 would be my guess.

Q. Now, let's take the next subtest, paragraph meaning. The median reported there is 6.4, is that correct? A. Yes.

Q. And if you converted that score, what would the median be? A. Again, an approximate one, 5.2.

Q. Then, let's take another subtest. Arithmetic computation. The median there is 6.0 as reported, is that correct? A. Yes, sir.

Q. And if you converted it as you have described, where would it be? A. Somewhere between 5.2 and 5.4 would be my guess.

Q. Now, you mentioned that the effect of normalizing, Mr. Cavanaugh, was to in effect lower the reported achievement at higher achieving schools and raise the reported achievement at lower achieving schools, is that correct? [416] A. Yes, sir.

Q. And the normalizing process was described to the school district in advance of the administration of the test, is that correct? A. I can't answer that, I don't know.

Q. When was the decision made to employ normalization? A. This I don't know.

Q. Is it fair to say, Mr. Cavanaugh, that those actual results were in fact predictable in advance? You knew that's what the effect would be, didn't you? A. No, sir.

Q. Why not? A. I don't believe so.

Q. Why not? A. Because in 1965 the new edition to the test was used for the first time in the survey.

Q. Well, you knew that there were some schools that

were achieving at a low level on the 1965—say, on the 1962 test, is that correct? A. Yes, sir.

Q. Is there any thing in the nature of the differences of the composition of the 1962 test and the 1965 test that would automatically change a school's achievement level? A. There were more subtests involved. Well, basically, I would say that the 1965 test was a more exacting test. You [417] would anticipate lower scores at both ends of the scale. The high achieving schools as well as the low achieving schools.

Q. And I believe you have told us, have you not, Mr. Cavanaugh, that from year to year there are particular schools that always seem to come out on the low end of the achievement totem pole, is that correct? A. Yes, sir.

Q. So you could sort of anticipate in advance what schools those are going to be, can't you? A. Yes, sir.

Q. And the same is true with respect to the higher achieving schools? A. Yes, sir.

Q. Isn't that right? A. Yes, sir.

Q. Now, you mentioned with respect to Exhibit 83 that there were certain factors in the background of that exhibit which were listed by rank order, is that correct? A. Yes, sir.

Q. Does Exhibit 83 have any predecessor? A. No, sir, not to my knowledge.

Q. That was the first time it was ever done, was it not? A. Yes, sir.

Q. Now, you also mentioned the achievement levels at [418] Wyatt. Is Wyatt a minority school, by the way? A. Yes, sir.

Q. What was its racial composition in 1965, the year we are focusing on? A. 1965? I don't know.

Q. Can you give us an approximation of what its racial composition was? A. No, sir.

Q. Well, we have in evidence—there is in evidence, Mr. Cavanaugh, Exhibit 243. This purports to give the ethnic distribution at Wyatt in 1965. According to Exhibit 242 it was 12.9 percent Anglo; it was about 45.6 percent Negro and 2.4 percent Anglo according to Exhibit 242.

The achievement levels at grade 3 for that school, Mr. Cavanaugh, as reported by you—were they relatively higher than they were at grade 5? A. With relation to the expectancy, yes.

Q. Is this a typical situation? A. I would say yes.

Q. In these minority schools? A. Yes.

Q. The children achieve relatively better in the early grades? A. Yes.

* * * * *

[419] *Recross-Examination by Mr. Jackson:*

Q. Mr. Cavanaugh, Mr. Greiner alluded to high achievement schools versus low achievement schools and the predictability of the norm adjustment that would be made on the 1965 test. The norm adjustments made for each school were not based on the school's prior history of achievement, was it? A. No, sir.

Q. Did that enter into it at all? A. No, sir.

Q. Was it considered at all? A. No, sir.

Q. Was anything but the IQ distribution in the school at the time the test was given utilized to arrive at the norm adjustment? A. No, sir.

Q. That was the only consideration given? A. Yes, sir.

Q. And the only factor used? A. Yes, sir.

* * * * *

[420] * * *

MARY MORTON, a witness called by and on behalf of plaintiffs, having first been duly sworn, was examined and testified as follows:

Direct Examination By Mr. Barnes:

The Court: Please give us your name and address.
The Witness: Mary Morton, 1210 South High.

By Mr. Barnes:

Q. What is your race, Mrs. Morton? A. White, Caucasian.

Q. What is your occupation? A. Elementary school principal.

Q. Of what school? A. Of Montclair Elementary.

Q. And of Montclair Annex as well? A. Right.

Q. For how long have you been principal at those two [421] schools? A. This is the ninth year.

Q. Can you give us the location of those schools? A. Montclair is at Eleventh and Newport. The Annex is at Thirteenth and Quebec.

Q. Do you know the location of the Philips Elementary School? A. Montview and Monaco, I think.

Q. About the corner of Monaco and Montview Boulevards? A. Yes.

Q. Can you tell us whether the area is bounded by East Colfax on the south, Kearney Street on the west, East Sixteenth Avenue and Batavia Place on the north, and Oneida Street on the east, if that was ever a part of the Montclair school district? A. Yes.

Q. During what years was it a part of the Montclair district? A. Around 1964, I believe, until—1968 was the last year, I think.

Q. The last school year was 1968-1969? A. Yes.

Q. That's not this year, but the year preceding this one. Was it a part of the Montclair school district in the year preceding this one? [422] A. Yes.

Q. It was one of the areas affected by the preliminary injunction, was it not? A. Yes.

Q. So that subsequent to that injunction or preceding that injunction, it was a part of the Montclair district? A. From 1964 on, yes.

Q. Do you know what district it was in prior to 1964? A. In the Philips area.

Q. Do you know what junior high school district that area has been in since 1964? A. Smiley.

Q. Have you ever talked with the parents of children living in this area about the junior high school their children should attend? A. Have I talked with them about it?

Q. Yes. A. Yes.

Q. Do you recall the names of these parents, some of the ones to whom you talked? A. The Price family, the Anderson family, the Patton family.

Q. Might there have been a McClintock family? A. It's possible. I don't remember the names of all [423] the children.

Q. This was during the period between the year 1964 and the end of the last school year of 1969? A. Yes.

Q. Might there possibly have been other parents to whom you talked concerning the junior high school their children should attend? A. Either talked or communicated by letter.

Q. Do you recall the race of the Prices and the Andersons and the Pattons? A. Yes, the Prices were Caucasian. The Andersons were Caucasian. And the Pattons were Negro.

Q. And the McClintocks? A. I can't remember.

Q. Did you ever have occasion to initiate discussions with parents of these four families or other families living within this area about the choice between Smiley Junior High School and the junior high school? (sic.) A. Will you repeat the question?

Q. Can you give us the location of the Smiley Junior High School, approximately? A. I believe 26th and Jasmine. I am not certain.

Q. 26th and Kearney— would be approximately right? A. It's in that general area.

[424] Q. And the Hill Junior High School? A. Is it Third and Clermont? Fourth and Clermont.

Q. At about Fourth and Clermont? A. Yes.

Q. Were the parents and children who lived in this area that we have been discussing living closer to the Hill Junior High School than to Smiley or vice versa? A. I never investigated this.

Q. The area is located north of Colfax Avenue, is it not? A. Yes.

Q. And Colfax Avenue is approximately at Fifteenth Street as you go north from First Avenue, is it not? A. Yes.

Q. And Smiley Junior High School is in the 25- to 2600 block going north? It's located directly north of this area?

The Court: We can take notice of distances. That needn't be proven.

Mr. Barnes: All right, Your Honor.

Q. Do you recall whether Hill was predominantly an Anglo school during the years 1964 to 1969? A. I would say yes.

Q. Do you recall the racial composition of Smiley during these years? [425] A. I would say—I had no personal contact with Smiley. I would say Negro probably.

Q. Predominantly Negro? A. (Nods affirmatively.)

Q. What was the racial composition of Montclair and the Montclair Annex for these years? A. Predominantly Anglo.

Q. To which junior high school did most of the students in the Montclair and Montclair Annex subdistrict go? A. To Hill.

Q. Did you ever request from the pupil personnel department of the authority to permit the children of families living in the area we have described to attend Hill? A. I did.

Q. And were these requests granted? A. Yes.

Q. In the absence of the permission granted by these requests to attend Hill, which school would these children have attended? A. Smiley.

Q. Did all of the children living in the area attend Hill and not Smiley pursuant to the permission that you requested? A. As far as I know, yes.

Q. In order to request this permission to attend Hill [426] rather than Smiley, did you require the children to furnish you with medical excuses? A. No.

Q. Or babysitter excuses? A. No.

Q. Did you discuss with these children the possible relative merits of the attendance at Hill or Smiley? A. No.

Q. Did you discuss with them differences in curriculum? A. No.

Q. Did you discuss with them the comparative distances between the two schools? A. No.

Q. Were there documents such as curriculum guides sent routinely to Hill Junior High School for the children living in this district? A. Curriculum guides?

Q. The curriculum choices that the children in the sixth grade would make before they went to high school. A. The junior high furnished us with cards for the children, to

have their parents sign, which indicated the courses offered and the parents could select with the child and the teachers' counsel which courses he would like the child to have.

Q. And where were these cards forwarded after they left [427] Montclair for these children living in this area? A. To Hill.

Q. Between the period 1964 to 1969, do you know how many Negro families attending Montclair lived in this area that we have been describing? A. No.

Q. How many do you recall? A. The Patton family is the only one I'm certain of.

Q. That's the only family whose children you recall attending Montclair who were Negro? A. Oh, no, I thought you were speaking within this small area.

Q. I was. I meant to be. A. That's the only one I'm sure of within that area.

Q. Between 1964 and 1969 approximately how many Anglo students lived in this area who attended Montclair? A. Are you speaking of all grade levels?

Q. Yes. A. This varied year to year. And this is only an approximate guess; twelve to twenty, perhaps. I don't know.

Q. And these children when they left Montclair would go where to junior high school? A. To Hill.

Q. And there would be about 12 to 20 each year that would come out? [428] A. No.

Q. How many would there be each year? A. The numbers in the sixth grade, the least there ever were was one, and the most was three or four.

Mr. Barnes: That's all I have.

[429] *Cross-Examination by Mr. Ris:*

Q. Mrs. Morton, how long have you been associated with the Denver Public School District No. 1? A. Since 1941.

Q. What was your first assignment? A. As a teacher at 24th Street School, which is now called Crofton.

Q. Where is it located? A. 24th and Arapahoe Street.

Q. What did you teach? A. Second grade.

Q. How long did you teach there? A. One year.

Q. What was its predominant racial characteristic? A. Largely Hispano.

Q. Then where did you go? A. To Whittier School.

Q. What was your assignment? A. Second grade in the beginning and then First.

Q. How long were you there? A. Until 1949.

Q. What was it predominantly? A. Negro.

Q. And then what was your assignment in 1949? [430] A. I became an elementary coordinator.

Q. For how long did you do that? A. About five years.

Q. Is that on a citywide basis? A. Yes.

Q. That took you then to about 1954? A. Yes.

Q. And what was your next assignment that year? A. As principal of Wyatt School.

Q. How long were you principal there? A. Two and a half years.

Q. And what was the predominant racial characteristic of Wyatt? A. It was Spanish and Negro predominantly.

Q. And after your termination of your assignment as principal of Wyatt in '56 what did you do? A. I was sent to Steck Elementary.

Q. How long were you there? A. Four years.

Q. And from there you went to Montclair in 1961? A. Yes.

Q. So you have either taught or been a principal or some association with the schools of varying ethnic and racial composition? A. Yes.

[431] Q. With regard to the so-called niches that plaintiffs have referred to, I would refer you to Plaintiffs'

Exhibit 71, which purports to be a map of the northeast section of Denver and showing various areas in yellow, and with arrows going from those yellow areas. Do you recognize those as being the results in that area of various boundary changes made in 1964? A. Yes.

Q. And would you just mark where this particular area is that we have been discussing this morning? Just put a "M" on it if you will, please. A. Just over it?

Q. Yes. A. (Witness drawing.)

Q. All right, now, you have put a "M" just to the right of the arrows. A. What is this? Is this Kearney here?

Q. Yes, Kearney, 209. A. Well, it should not—it doesn't mean just right of the arrow, but—

Q. No, it is the enclosure in which the "M" is placed. A. Right, right. This area was changed—

Q. All right, but the enclosure with the "M"—there is a little "x" ahead of it. I don't know where that [432] came from—but that is the area that we are discussing now? A. Yes.

Mr. Ris: Mr. Kerr, could I have Exhibit 71. I am sorry, I did this on our copy. Well, we don't seem to be able to find the original. With leave of Court, may we conform the original when we do find it?

Mr. Greiner: Your Honor, Exhibit 71 was one of the exhibits marked for identification at the summer hearing and not put into evidence, and 71 is not at this point in evidence.

Mr. Ris: That may be the answer then. We will have it so marked. Is it agreeable?

Mr. Greiner: I think we are talking about Exhibit 80 and 81, actually, Your Honor. Oh, you are talking about 71?

Mr. Ris: Yes.

Mr. Greiner: Oh, yes, 71 is in. I misspoke, Your Honor. Sorry.

Mr. Ris: Well, we will conform it, if it is agreeable with counsel, when we find the original.

Mr. Greiner: Yes. Counsel, 71 is on one of these boards right here.

Mr. Ris: All right.

Q. We now have the original, and I will ask you to [433] do it on the original, if you will, please. A. (Witness drawing on exhibit.)

Q. Thank you. Mrs. Morton, the first year then that you had students from this particular area was the school year 1964 and 1965, is that correct? A. I believe so.

Q. At the end of that school year, were you approached by some pupil or his family about going to Hill rather than to Smiley? A. The pupils expressed their wish to me.

Q. Was this initiated by the pupils? A. Yes.

Q. It was not initiated by you? A. No.

Q. And what was the stated reason by these pupils? A. They wanted to go with their friends.

Q. From the sixth grade at Montclair? A. From the sixth grade at Montclair.

Q. And how did you consider that as a reason? A. I considered it a logical and very understandable reason.

Q. All right. And, generally, insofar as the neighborhood school concept as it had been applied in the past, was that one of the elements that went into determining where the pupils would go, that they would so far as possible stay [434] with their own peer group? A. This varies from junior high to junior high. It is a geographic chain but—

The Court: He means, generally speaking, one of the values of the neighborhood school is that it

maintains this association of a person with other friends that were in his neighborhood and so on.

The Witness: I can't speak for the reasons why.

The Court: Isn't that what you are asking?

Mr. Ris: Yes, that's exactly what I was asking.

The Witness: Why they are set this way—but I would certainly assume that this would be a part of the reason.

Q. You don't know what all the elements are that go into it? A. No.

Q. Now, did you then speak to the parents or communicate with the parents one way or the other, or did this request come through the parents initially? A. The children—the first year, it came to me through the children.

Q. All right. A. I asked—I don't recall the exact procedure. This was some time ago.

Q. Yes. [435] A. I made a contact with the parents and asked, if this were possible, would they prefer that the child go with their classmates to Hill or to Smiley. Upon their decision then I made the contact with the pupil records department or the pupil personnel.

Q. So, each of the instances, in each of the five years, was your request then of the pupils and the parents? A. Yes, at the same time I did request that the boundary of the junior high be made to coincide with the boundary of Montclair so that it would not isolate these one to three or four children.

Q. And you say that in the various years involved from '64 to '69 there was never less than one or more than four or five involved? A. Right.

Q. And was there any distinction made with respect to the one Negro child? A. None.

Q. Did the Negro child also, and her parents, request that you initiate proceedings to have him or her go to Hill also? A. Yes, sir.

Q. Did you do so? A. Yes, sir.

[436] Q. Was that request granted? A. Yes.

Q. As you made these requests to the Administration Building, was the color or race or ethnic background of these children disclosed? A. No.

Q. Were these requests in writing? A. Yes.

Q. And no reference to race or ethnic origin at all? A. No.

Mr. Ris: That's all. Thank you, Mrs. Morton.

Further Cross-Examination by Mr. Brega:

Q. Mrs. Morton, did you have any racial or ethnic motivation in requesting these applications to Hill? A. Absolutely none.

* * * * *

[440] MARLENE CHAMBERS, called as a witness by the plaintiffs, being first duly sworn, on her oath testified as follows:

The Court: Please take the witness chair, if you will, please, and give us your full name and address and occupation.

The Witness: My name is Marlene Chambers. I live at 2905 South High, and I am a housewife.

Direct Examination by Mr. Greiner:

Q. Mrs. Chambers, do you have children currently enrolled in the Denver Public School System? A. Yes, I do. I have two children, both girls. One is a sixth grader at Hallett and one is a fourth grader at Hallett.

Q. Are those children participating in the Hallett voluntary open enrollment program? A. Yes, sir, they are.

Q. You live at 2905 South High? A. That's right.

Q. Which elementary school district is that located in? A. The Slavens area.

Q. Are you familiar with the origination of the Hallett program, Mrs. Chambers? A. Yes, I am. Just before the Christmas recess in [441] 1968, the school administration sent home notices with some children at some schools, explaining that the Board had approved on November 21 a new kind of voluntary open enrollment program.

Q. Mrs. Chambers, I am handing you what has been marked for identification as Plaintiffs' Exhibit 413. Is that the notice to which you have reference? A. Yes, it is.

Q. And that was sent out from the schools? A. It was sent home from University Park School December 17th, I believe. At Slavens, they weren't sent home until January 2nd.

Mr. Greiner: Your Honor, we would offer Exhibit 413 at this time.

Mr. Creighton: Your Honor, this is a new exhibit and we haven't seen it.

The Court: Well, just take your time, just so you hurry up.

Mr. Creighton: I hope it is a short exhibit.

Your Honor, this exhibit appears to be the same pages as Plaintiffs' Exhibit 36, previously admitted, with the addition of a blank copy of Plaintiffs' Exhibit 37-B without any writing on it. I have no objection.

The Court: Very well.

Mr. Brega: No objection.

[442] The Court: It will be received.

(Plaintiffs' Exhibit No. 413 was received in evidence.)

Q. You said that some parents at the University Park School had received the notice, an example of which is Exhibit 413? A. That's right.

Q. You were not then in the University Park district, is that correct? A. No, sir.

Q. Were you contacted by University Park parents? A. Yes, during—informally first by a friend, who notified me of this possibility, but then during the Christmas vacation I was called to a meeting which had been arranged at the home of Carolyn Edder, and there were several parents asked to attend this meeting from several south and southwest school districts.

Q. Did such a meeting take place? A. Yes.

Q. Do you recall approximately when the meeting took place? A. It was on December 30th, the Monday after Christmas.

Q. What time of day did the meeting take place? A. It was in the morning.

Q. Now, do you recall what schools were represented at [443] that meeting? A. Not precisely, no. There were several people there from several different schools. There were—

Q. Can you identify the schools that you recall being represented at the meeting? A. Ash Grove, Slavens, University Park. I am not sure of the names of the southwest schools. There were two different southwest schools at least there.

Q. Were there any parents at the meeting from the Hallett school? A. Not that I recall.

Q. All right, now, what was the subject of the meeting, Mrs. Chambers? A. The subject was to decide whether or not there was some way to make this voluntary open enrollment program effective. You see, the form that had been—the letter that had been sent home explaining the plan—

Q. You are referring now to Exhibit 413? A. That's right, this exhibit—just explained the possibility if the child's enrollment in the new school would improve the racial balance there and if space were available in the new school requested, then a transfer might be effected, and the purpose of this meeting was to find out if there was some way to concentrate the volunteers to a particular minority school, rather than sending the children [444] out so that they would become fractional minorities in their new schools, also to see if it weren't possible to actually desegregate some minority school by this joint effort.

Q. Now, during the course of this meeting, did the group decide upon a target school? A. Yes, they did.

Q. And what was that school? A. Hallett.

Q. Did you have an idea, Mrs. Chambers, of how many volunteers you were going to need for the Hallett program? A. Well, during the discussion that morning some of the people present felt that the whole plan would be much more attractive to many more white parents if they felt that Hallett would become a majority white school by this action, and so the possibility was discussed of making all of the answers conditional answers. That is, people would fill out this form in a way that would say, "I will send my child to Hallett, if Hallett thereby becomes a majority

white school," and in that case about 300 or 350 volunteers would have been needed, both into and out of Hallett.

Q. Now, Exhibit 413, Mrs. Chambers, did that have a deadline by which responses were to be returned to the school? A. Yes, the date January 6 is given.

Q. Was that deadline a subject of discussion at this parents' meeting? [445] A. Well, it was the subject of concern, and during the course of the meeting we decided to draw up a communication which could be sent to some parents or to some schools which would explain our plan and that we would take this communication to the office of Lloyd Jones, who had sent out the original communication.

Q. The original communication being Exhibit 413? A. Right, Exhibit 413, and we would see if he could help us get this information—our information distributed to certain schools, and at the same time we would ask him if it were at all possible to extend this deadline, which was a very short time.

Q. And was a proposed statement then drafted at the meeting? A. Yes.

Q. I am handing you what has been marked for identification as Exhibit 414 and ask if that is the statement to which you have reference? A. Yes, it is.

Q. Has that been in your possession since it was drafted, Mrs. Chambers? A. No.

Q. Where has it been? A. Carolyn Edder had in her files.

Q. But you can identify it as the draft? [446] A. Yes.

Mr. Greiner: Your Honor, at this time we would offer Exhibit 414.

Mr. Creighton: Again, we have not seen this before, Your Honor.

The Court: Do you wish to see it?

Mr. Brega: I have already gone through it, Your Honor.

The Court: All right.

Mr. Creighton: May I voir dire?

Voir Dire Examination by Mr. Creighton:

Q. Do I understand that this is a carbon of a letter you wanted Mr. Jones' office to send out? A. Right.

Q. And it would be signed by, as it states here, a group of interested parents? A. At that time, yes. That was the idea.

Q. In other words, this was your group's letter that you wanted Mr. Jones to send out? A. Well, it was our suggested letter, yes.

Mr. Creighton: Well, we have no objection to the exhibit being received.

The Court: It will be received.

(Exhibit No. 414 was received in evidence.)

[447] The Court: I guess you have none, either?

Mr. Brega: I believe there is some handwriting on the bottom. Is that yours?

The Witness: That is Mrs. Edder's handwriting. I think she wrote it there after it was rejected.

Mr. Brega: It wasn't there at the time it was submitted?

The Witness: No, it wasn't on there at the time it was shown.

Mr. Brega: I have no objection, Your Honor.

Direct Examination by Mr. Greiner (Continued):

Q. Mrs. Chambers, that meeting was on Monday, December 30? A. That's right.

Q. Did you then contact Mr. Jones? A. We contacted his office and made an appointment that afternoon for four of the people.

Q. Did a delegation from the group go down and talk with Mr. Jones? A. Yes, sir.

Q. And that was the afternoon of December 30th? A. That's right.

Q. Who was present at that meeting? A. Well, the delegation consisted of Mrs. Pat Samuel, [448] Mrs. Diane Greenspun, Mr. Craig Barnes and myself.

Q. And— A. And the person we met with was Mr. Lloyd Jones.

Q. And can you tell us, please, what was said to Mr. Jones at the meeting? A. Well, we explained to Mr. Jones our concern for the success of a voluntary open enrollment program which would lead to integration and the drawbacks which we saw in the way the plan had been presented to the schools or the children of the schools and to the parents, and we suggested to him that he might like to consider the idea that the group had had for making the voluntary open enrollment an effective means of desegregating the schools rather than kind of a shotgun approach.

Q. Did you have Exhibit 414 with you at this meeting with Mr. Jones? A. I think so.

Q. Did you discuss 414 with Mr. Jones? A. We discussed sending out a notice, yes.

Q. Did Mr. Jones make any comments regarding the content of your proposed notice? A. No.

Q. All right, what else if anything was said by your group to Mr. Jones concerning this idea of a target program

at Hallett? Did you discuss the condition of conditional [449] transfers? A. Yes, we discussed the question of conditional transfers and—

Mr. Creighton: Excuse me, Your Honor, I don't understand conditional transfers.

The Witness: Well, our—

The Court: Hold up just a minute.

The Witness: Oh, excuse me.

The Court: Well, she has already explained it, I believe, as a program that they conceived as a variation of the original proposal whereby these transfers would come about only on condition that they had a large number of people to make a real impact on the segregated school. That was my understanding.

Mr. Creighton: Yes, the reason I asked is there is a traditional transfer meaning relating to a word of art relating to the school system.

The Court: Well, this is in this context. The transfer would take place only if the school would become predominantly Anglo, is that correct?

The Witness: That's correct.

Q. What if anything did Mr. Jones say? A. Well, he said, "As I understand it, if you don't get enough people to volunteer to make this a majority white school, then it is no go?" And we said, "Yes, it is no go," [450] and he just nodded his head, and that was that.

Q. Did you discuss with Mr. Jones any means by which your proposed notice might be sent to the parents? A. Yes, we asked him if it might be possible to send this notice out through the school offices. We had selected six white schools to concentrate the recruiting efforts in and we felt that it

wasn't unreasonable to ask the administration to circulate some notice concerning the plan to the children in those six schools.

Q. Did you discuss with Mr. Jones the total number of such notices that might be required? A. No.

Q. Did you discuss with Mr. Jones the identity of the schools which you had selected? A. Yes.

Q. And there were six such schools? A. Right.

Q. Now, what if anything did Mr. Jones say with respect to your request that the notice be sent out through the schools? A. He said that it might be possible. He seemed to agree in theory that the plan was a good plan to concentrate voluntary efforts in one minority school, but he did not agree to send out the notices at that time.

[451] Q. Did Mr. Jones make any suggestions as to where your group should next go? A. He asked us if we would meet with him and Howard Johnson and Dr. Keppe.

Q. And was such a meeting arranged? A. Yes, it was for the following day.

Q. And did it take place then the following day? A. Yes, it did.

Q. And who was present at that meeting? A. The same four members of the delegation, Lloyd Jones, Howard Johnson, and Dr. Keppe.

Q. Where did the meeting take place? A. In Howard Johnson's office.

Q. Can you describe for us, please, Mrs. Chambers, what went on then at that meeting? A. At that meeting Lloyd Johnson—Lloyd Jones explained to Howard Johnson the plan, if you want to call it the Hallett plan—told him what sorts of things we were asking from the administration in order to make it work and expressed the idea that he would like to do this for us.

Q. What was Mr. Johnson's response, if any? A. His immediate response was, "and leave town, Lloyd?" Because, Mr. Jones was planning to go to a sabbatical shortly thereafter.

Q. Mrs. Chambers, did you have Exhibit 414 with you at [452] the conference with Mr. Johnson? A. Yes.

Q. Was Mr. Johnson given a copy of this proposed notice? A. Yes, he next read the notice and I think as we might have anticipated he objected to a number of the statements in the notice.

Q. What did your group say with respect to any of those objections? A. Well, at each objection, we agreed that the objection should be deleted from the notice, that the objectionable material should be deleted.

Q. Do you have any recollection as to what some of Dr. Johnson's objections were? A. Well, certainly—the primary one was that there is a statement in this notice to the effect that we do not believe that voluntary integration is the proper way to integrate the schools.

Q. And he wished that deleted? A. He wished that deleted, understandably.

Q. Anything else? A. Pardon me?

Q. Anything else? A. I can't recall many of the other ones. He did [453] object somewhat to the idea of a conditional response and that also is included in this letter. He felt that the schools couldn't accept a conditional kind of response, and later in the discussion he did—we suggested that perhaps parents might fill out this form conditionally in any event, and he said—well, we asked him what would happen in this case, and he said, well, these forms then would be put at the bottom of the pile, and if there were any room left they might or might not be processed. So, we actually got no definite answer about the conditional response.

Q. What if anything did Dr. Johnson say about the sending of this proposed notice under the school auspices? A. He said it was impossible even with the deletions that we agreed to; that the schools could not do this because the board had instructed the administration to inform the parents that voluntary open enrollment was available but they had not instructed the administration to promote it.

Q. Now, Mrs. Chambers, I take it then, as a result of that meeting that your notice was not sent out by the school district? A. Certainly not.

Q. And what, if any, help did you receive from the school administration in trying to implement the Hallett [454] A. Well, we had asked for three different sorts of aids: one was that the notice would be distributed through the administration, and that was refused. We had asked that the administration accept a conditional kind of response to the form, and that was really noncommittal. And the third thing we had asked for was an extension of time as far as returning the forms so that the parents could have a little more time to think over the possibilities of the plan. And—

Q. With respect to—pardon me. A. I was just going to say, and the last request was granted. Mr. Johnson agreed to a three or four-day extension of time at that moment.

Q. Mrs. Chambers, in the course of your meeting with Mr. Johnson and in discussing the question of getting notice to the parents, did you also discuss the possibility of calling parent meetings at the various target schools, recruiting schools? A. I don't believe that we did.

Mr. Greiner: No further questions, Your Honor.

Cross-Examination by Mr. Creighton:

Q. Mrs. Chambers, I believe you said your initial talk with Mr. Jones was on the 31st of December? A. No, our initial talk with Mr. Jones was on the [455] 30th of December.

Q. On a Tuesday? A. A Monday, isn't it?

Q. Well, then, your meeting with your group was on what day? A. On that same Monday, that same day.

Q. The group met in the morning and you saw Mr. Jones that afternoon? A. That's right.

Q. That was the 30th? A. That's right.

Q. Then the next day, December 31st, you— A. —met.

Q. Met with him? A. Johnson and Jones and Keppe, the three of them.

Q. Now, when was the second semester to begin? A. I think it was January 27th, but I'm not absolutely positive.

Q. That date is reflected in the notice, is it not? A. I don't know.

Q. And didn't you estimate that it would take some 350 children each way, given the size, I suppose, of Hallett, to accomplish your objective of what—at least 50 percent— A. 350 would have been sixty percent. 300 would have been fifty.

[456] Q. And that fifty percent of which school? A. Of Hallett.

Q. And that was your objective? A. That was our objective, yes.

Q. And Mr. Jones agreed that the idea of targeting in on a school had merit, didn't he? A. Yes, he did.

Q. And did he urge the meeting with Mr. Johnson the next day? A. He asked us—he invited us to join him at the meeting, yes.

Q. And so, by the time you met with Mr. Johnson, you

would have had something like 27 days left before the semester began? A. That's right.

Q. Would this involve busing, given the locations of the schools? A. Certainly.

Q. Did you understand it would involve arrangements for busing? A. Certainly.

Q. Did you understand it would involve shifting of records and coordination of children's courses? A. Yes.

Q. Was there an actual risk that you might not achieve [457] your 300 each way? A. Of course.

Q. And we understand that if you did not achieve that number, then—for your part, you didn't want the program to go forward? A. For my part personally, I did.

Q. But the group as a whole? What was its— A. The group as a whole had at that time determined it would not go forward if the objectives were not met.

Q. So Mr. Johnson correctly understood that, if you couldn't get 300 each way in the next 27 days, of these background and necessary arrangements of busing, curriculum, notification, and so forth, then the deal was off; no go, you say? A. That's right.

Q. What kind of a new deadline did you want for finding out whether it was go or no go? A. Well, considering the fact that the notices had not even been delivered to my school yet, I felt that it would only—that it was only right that there should be a few days at least for parents to consider the new approach to the voluntary open enrollment.

Q. Well, how many days? What new deadlines did you want? A. We agreed at the time—agreed to the three or [458]four days which he suggested.

Q. Which would have been about the 10th of January? A. Uh-huh, about the end of that week. January 6th was a Monday; after school resumed on the 2nd, which was a

Thursday. And he agreed to accept the notices up till the end of that week, which was the 10th, wasn't it?

Q. Who is this, again? A. Mr. Johnson.

Q. Now, the notice reached the Hallett parents when? Do you know? A. No, I don't know.

Q. When did you hear of it from the Hallett parents?

Mr. Greiner: Pardon me, Your Honor. Could we have identified which notice counsel is talking about?

The Court: The original notice, I assume, from the school administration.

Mr. Creighton: Yes, I beg your pardon.

Q. The original notice of the VOE program, I believe you testified you heard about from Hallett parents? A. No, I heard about it initially from University Park parents.

Q. Excuse me. University Park parents.

And when was this? A. The notice—the notices, I believe, were delivered to them on December 17th. I heard about it by the following [459] Friday from a friend.

Q. Do you know of the date of the arrival of this notice at any other schools besides University Park and Slavens? A. You mean the date that the notice arrived from downtown?

Q. Yes. A. Or the date it was given out to the children? I'm not sure—

Q. The date that it reached the children, from them to their parents? A. Yes, I do know. There were several schools at which it was not delivered until after the holidays.

Q. Where were these schools? A. Moore was one of them.

Q. Now, that's not in your area, is it? A. I don't know what you mean by my area.

Q. Was Moore school included in your group of schools?

A. In the group of six that we were trying to recruit, no.

Q. Any other schools you know about when the notice arrived to the parents? A. Well, I'm not positive of the names of the schools but I do know there was at least one other school. It might have been Montclair, where it was not delivered until after [460] the holidays, because, special arrangements had to be made for two or three schools—they finally received an even more extended deadline.

Q. That was the Montclair School in your group of six? A. No.

Q. So in your group of six schools, only your own school, Slavens, got the notice through to the parents late in December? Is that a fair— A. No, it is not. Slavens didn't receive the notice until January 2nd.

Q. Yes. A. And I'm not sure when the other schools besides University Park received it.

Q. And, as you went through the objections that Mr. Johnson raised to your proposed form of notice, what was done about the provision in your proposed form of notice of what you call the conditional response? A. I'm not sure that I understand the question.

Q. Did Mr. Johnson agree that that could be removed from your notice? A. He asked that it be removed and we agreed.

Q. And you agreed to that. Then, you made the counter-suggestion that all of the applications contain the condition? Was that the arrangement? [461] A. No. At the outset of the meeting our plan really was to cooperate as fully as possible with the administration and secure their utmost cooperation in order to make the voluntary open enrollment plan a feasible opportunity for many people who otherwise would not be willing to volunteer one child, you know, black or white, into a school where that child might be the only

member of his race. And whatever Howard Johnson said about wishing to have something changed in our notice, we were willing to agree with, because we wished to have some notice to explain this plan sent out to the parents.

And I don't really understand if I have answered your question or not.

Q. Well, let me ask another then. Did you then, when he agreed to take out, among other things, the conditional aspects of the—

The Court: He didn't agree to it. He suggested it.

Q. He suggested it and you agreed to it.

The Court: We ought to get these things moving on the right—

Mr. Creighton: Beg your pardon.

Q. Then, in agreeing to Mr. Johnson's suggestion that that conditional statement in the notice come out, did you then state that the request would be conditional; that that [462] would be part of your plan? A. I still don't understand what question I'm supposed to be answering. What request do you mean?

Q. Well, Mrs. Chambers, Mr. Johnson went through your proposed form of notice, did he not? A. Yes, sir.

Q. And there were several items there that he felt could not be contained in such a notice if it went out from the district, is that right? A. Yes, sir.

Q. And one of them was that the program would not be implemented unless certain—a certain level of participation was achieved, is that right? A. One of the items that he objected to was that.

Q. Yes, and he suggested— A. No, he did not. He didn't.

He objected to our having parents fill out these forms in a conditional way. He wanted the parents to fill out, "Yes, I'm sending my child regardless of who else is going." He didn't want to allow the conditional kind of response by the parents.

Q. Right. And was anything said at that meeting about any school district policy regarding the sending out by the school district of notices not originated by it, do you recall? A. No, I don't think that was the basis for his [463] objection. The objection was that, in sending out the notice, the administration would be promoting voluntary open enrollment for integration, not merely informing the parents that there was such a plan.

[464] Q. And are you quoting Mr. Johnson? A. Yes, I am.

Mr. Creighton: All right, you may examine.

Mr. Brega: No questions, Your Honor.

Redirect Examination by Mr. Greiner:

Q. Mrs. Chambers, who was Howard Johnson at the time you were attending this meeting? A. He was the Deputy Superintendent for the Denver Public Schools.

Q. And who was Dr. Keppe? A. Superintendent of Instruction, I believe.

Is that right?

Q. At what level? A. Citywide, at the elementary level.

Q. And who was Mr. Jones? A. Lloyd Jones at that time was the Superintendent of Elementary Education. Is that—I am—I can't remember exactly.

Q. Approximately how many parents did you want to contact in the target recruiting schools, do you have any idea? A. We wanted to contact them all.

Q. And do you have any idea how many that was? A. No, I really don't.

[465] Q. Do you have a ball-park figure? A. Maybe 3,600. It is a ball-park figure.

Q. Now, you received no administration help in contacting the parents that you wanted to have contacted? A. No, we had to arrange our own means of informing parents.

Q. Subsequently, were you in fact able to contact these 3,000 some odd parents? A. We probably didn't contact them all, but we did manage to inform most of them of meetings. We had to—through the school community relations committees of the PTA's in these various schools, we arranged very quick meetings, at which the program was discussed.

Q. What was the total attendance of parents at those meetings, do you recall? A. I really couldn't say for sure. I would say possibly 500 people.

Q. And do you recall whether or not your objective of a predominantly Anglo school at Hallett was achieved? A. No, it was not.

Q. About how many volunteers did you succeed in getting? A. I'm not absolutely sure how many Anglo volunteers there were. I think it was in the neighborhood of 100 before a meeting which was subsequently held to decide what possibilities were open to these volunteers at that time, and many of [466] the initial volunteers conditionally were at that time withdrawn, so that only 55 children participated in the program last January.

Q. That's 55 Anglo children? A. That's right.

Mr. Greiner: No further questions.

Recross-examination by Mr. Creighton:

Q. Mrs. Chambers, subsequent to the second semester of the last school year, that is, subsequent to last January,

this Hallett program has been supported by the school district, has it not? A. To a certain extent, yes.

Q. Hasn't the school community relations office of the school district made it a special part of its efforts? A. As far as recruiting white children to Hallett and as far as trying to recruit Negro children to leave Hallett, that's true, but as far as making the move attractive in either direction, it is not true.

Q. What makes the move attractive? A. Well, I haven't been in court during the days that you have been going over this, but most of the parents who were involved in the Hallett plan who cared enough about integration to do something about it in the schools believed quite strongly that a segregated minority school is an [467] inferior school.

Q. Mrs. Chambers, what my question was, what makes this kind of program attractive to those involved? A. The thing that makes it attractive is to improve the quality of the school.

Q. And how is that done? A. Well, I assume one of the ways of doing it, as far as many majority white parents are concerned is to improve the quality of the materials available for the children. There were many materials, for instance, that were available to my children at Slavens that were not available to them when they moved to Hallett.

Q. Now, is it the materials at the schools then that makes this attractive? A. I think it makes it attractive to many people, yes. I think the experience and quality of the staff is also an important factor. Hallett happens to have primarily inexperienced teachers on its staff, not that that makes them bad teachers in my view, but as is generally true the inexperienced teachers are assigned to schools like Hallett rather than to schools like Slavens.

Mr. Brega: I am going to object. I don't believe that's responsive and it is hearsay and drawing a conclusion of the witness.

The Court: She is giving her viewpoint and, anyhow, [468] he has a right to pull this out if he wishes. It is cross-examination. It is not for you to rescue him, or me either. I mean, he is in on this. Let him find his own way out.

Q. Well, in your view, Mrs. Chambers, younger teachers are not necessarily poorer teachers? A. In my personal view, yes, but I think in the opinion of many parents, no.

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PALICIA LEWIS, called as a witness by the plaintiffs, being first duly sworn, under oath testified as follows:

The Court: Please take the witness chair and state your name and address, please.

The Witness: Palicia Lewis, 5301 East 36th Avenue, Denver, Colorado.

Direct Examination by Mr. Barnes:

Q. What is your occupation? [469] A. I am a teacher in the Denver Public Schools system, Horace Mann Junior High.

Q. Do you have children in the Denver Public Schools? A. Yes, I do have.

Q. What are their names and grades and schools? A. Lawrence Lewis, Jr., eighth grader at Kunsmiller.

Camelia, fifth grader at Moore.

Paul and Pamela, third graders at Moore.

Q. In what school district do you live? A. Smith Elementary School District.

Q. How did you learn of the voluntary open enrollment plan when it was announced last year? A. A notice was sent home by our son from Smiley Junior High School.

Q. About what time did you receive that notice? A. Shortly before the Christmas holiday began.

Q. And did you fill in that form and return it? A. Yes, we filled in the form, returned it to Smiley.

Q. And how did you return it? A. By our son.

Q. And that son is— A. Lawrence Lewis, Jr.

Q. About what time was that when you sent it back? A. After the Christmas holidays, 2nd or 3rd of January, sometime that week.

[470] Q. Did you indicate a choice or did Lawrence indicate a choice of schools where he would like to voluntarily enroll? A. Yes, he did.

Q. What was that choice? A. Hamilton Junior High School.

Q. Was there a second choice? A. Hamilton Junior High School.

Q. And a third? A. Smiley.

Q. After sending the notice back to Smiley Junior High School, did you receive a response from the school? A. No, sir, we did not.

Q. How long did you wait for such a response? A. Maybe a week. I waited until some of the people I knew started—began receiving their responses. I had a niece in Smiley and she received hers and her request had been granted.

Q. Did you then subsequently inquire what happened to your returned notice? A. I called the school and asked if my request had been granted and I was referred to a Mrs. Barnes. She indicated that the request had been received but it had been denied.

Q. What were the grounds given for its denial?

Mr. Brega: I am going to object to that, if the [471] Court please.

The Court: Well, what's the purpose of this, Mr. Barnes?

Mr. Barnes: It is offered, Your Honor, to show the state of mind of the school district and the conditions upon which denial was sent.

The Court: Who was the speaker?

Mr. Barnes: I think the witness testified Mrs. Barnes at Smiley Junior High School.

The Court: What position?

The Witness: Coordinator.

Q. Was she coordinator of the voluntary open enrollment? A. She was coordinator of the school.

Q. Were the requests in her custody, as I understand it? A. This was the person to whom I was referred when I asked the question.

The Court: Well, I think all of these individual experiences are of limited probative value, frankly. In other words, I don't see how you can prove up the policy. You get some indication of it, perhaps, but—is that what you are trying to do? Are you trying to prove intent or motive or plan or scheme? Is that the idea of this?

Mr. Barnes: It also is a partial explanation of the failure of the voluntary open enrollment policy to [472] integrate, Your Honor. This is very brief at this point.

The Court: Well, is this offered as a policy of the school board or just the—

Mr. Barnes: No, it is not the policy of the school board.

The Court: Well, it can't be of much value to us, I do not suppose. You are just saying that there are a number of obstacles to ever making this kind of a program work, is that your idea?

Mr. Barnes: Yes, Your Honor.

The Court: All right, we will hear it then for that limited purpose and overrule your objection.

Q. What did Mrs. Barnes say to you was the reason for the denial of your request? A. She stated that only children who were already on buses to Smiley were being bussed to Hamilton, would be accepted at the Hamilton program.

Q. And was your son already on a bus? A. He was not.

Q. Where did Lawrence then go to school the second semester? A. To Smiley.

Q. Went to Smiley? A. Yes.

Q. Mrs. Lewis, did you work last summer on the so-called [473] Hallett Program? A. Yes, I did.

Q. Have you heard the testimony of Mrs. Chambers this morning describing the initiation of that program? A. Yes.

Q. Is that a program which you worked on last summer? A. Yes.

Q. What was your responsibility in connection with that program? A. We contacted parents throughout the city, recruiting volunteers for the program, promoting class community communication.

Q. Did you work out of an office in the Administration Building? A. Yes, I did.

Q. What was that office? A. School-Community Relations office.

Q. What were the dates that you worked there on this program? A. I worked from mid-August—about the 23rd of June to mid-August, the 15th of August.

Q. Were you employed by the Denver Public Schools to do this? A. Yes.

Q. Was there anyone else working in the School-Community [474] Relations office on this program? A. Yes, there was one other person working full time, two people who worked on it sometimes, three secretaries, one full time.

Q. And was it a part of your responsibility to publicize the program to parents in the district? A. Yes.

Q. What were the various methods you used to try and do that? A. We made phone contacts. We held coffees. We had tours. We had picnics.

Q. When you contacted parents, did you attempt to explain the details of the Hallett Program to them? A. Yes, we did.

Q. What were the details which you related to them that would make it attractive? A. We promised integration, the first thing. Then they were promised, as the plan finally developed, that a group of consultants would be provided to go from Hallett School to the focal schools to define the problems and to provide directions for working with them and coping with them.

Q. Did you contact parents, both Anglo and Negro parents? A. Yes, we did.

[475] Q. And Hispano parents? A. Yes.

Q. And did you contact them in all areas of the city? A. Practically, except north.

Q. To assist you in this effort, were there any other people in the school administration? A. Many of the

offices did work on this program. Mr. McWilliams worked on it. Dr. O'Hare. Dr. Jones.

Q. Excuse me. Do you recall what office Mr. McWilliams was in? A. His office dealt with the assignment of children in the voluntary open enrollment program.

Q. And Mr. O'Hare's office? A. Dealt with pupil services.

Q. And Mr. Jones' office? A. Elementary education.

Q. And were you also assisted by Mr. Olander's office? A. Yes, for transportation.

Q. Did you also engage the assistance of volunteers from the community? A. Yes.

Q. Approximately how many such volunteers did you have helping you? A. Approximately 170.

[476] Q. And, altogether, with the work of the people in the School-Community Relations office and your 170 volunteers, approximately how many citizens do you think you contacted directly by phone and at meetings? A. Two or three thousand.

Q. Did you contact some of these people more than once? A. Yes.

Q. What was the purpose of the subsequent contact? A. Many people had additional questions to ask. I failed to indicate we had a publication, VOE Dialogue, that went to large—to a large number of people, and when they had questions or if there were questions that arose at coffees or meetings, that individual's school chairman reported to us, and we made contacts to—

Q. Did you identify any focal schools for Negro parents to send their children to that would have the same attractiveness of the single Hallett School for the Anglo parents? A. Attempts were made to do this.

Q. What schools were identified? A. Ellis, Carson, Slavens, Johnson, University Park—perhaps.

Q. And did you suggest that there was a possibility that a Negro child who volunteered might be able to go to [477] one of these schools as opposed to any one of the fifty elementary schools in the district? A. They were given the freedom of choice. They were told these were focal schools but their choice would be honored even if it were any one of the thirty-four schools that were involved.

Q. This was offered as an additional inducement to participate, was it not? A. Yes.

Q. How many new Anglos did this program—Would you describe it as a two-month effort? A. It was an all-summer effort; June, July and August. I worked for two months.

Q. How many new Anglos did you recruit to come into Hallett as a result of your efforts? A. August 9th—I left the 15th of August—the record showed 153 new Anglo parents—children volunteered.

Q. And how many new Negro children did you recruit to leave Hallett? A. Ninety-seven by that date.

Q. What was your goal for children into and out of Hallett? A. Five hundred into, five hundred out of.

Q. And would this have made Hallett a predominantly Anglo school? [478] A. Yes, it would have.

Q. Did you succeed? Apparently you did not. A. No.

Q. Do you think you would have succeeded given more time? A. No.

Q. If you were given this coming summer to promote the same program, would you expect that you would succeed?

Mr. Ris: If the Court please, that's pure speculation.

The Court: Sustained.

Q. Do you know of any improvement in the voluntary program at Hallett which could be implemented to make it succeed? A. No.

Q. Mrs. Lewis, did you attend a meeting in January of 1966 to consider overcrowding in Smith Elementary School? A. Yes.

Mr. Ris: What year?

Mr. Barnes: January, 1966.

Q. Did you have a child in Smith at that time? A. Yes.

Q. Did you have more than one? A. Yes.

Q. Two? [479] A. Two.

Q. Who else was present at that meeting? A. The parents of Smith School community.

Q. Was there a large group? A. It was a pretty large group, a couple of hundred.

Q. Where was it held? In the Smith School, in the auditorium or the cafeteria? A. In the auditorium at Smith School.

Q. Was there anyone there representing the school district? A. Yes.

Q. Who was that? A. Mr. Howard Johnson was there, Mr. Olander was there.

Q. What was Mr. Johnson's position at that time? A. Deputy Superintendent.

Q. What was the approximate racial composition of Smith at that time? A. It was predominantly Negro.

Q. Was there a discussion at that meeting of various measures which might be taken to relieve the overcrowding

at Smith Elementary School? A. Two measures were discussed.

Q. Was Smith on double sessions at that time? A. Yes, in the first grade. Kindergarten was on multiple sessions.

[480] Q. What were the measures which were discussed to relieve overcrowding? A. Busing children out or adding six mobiles.

Q. And the representative of the district—was that Mr. Johnson? A. Yes.

Q. And he presented all these alternatives? A. Briefly, yes.

Q. Did Mr. Johnson represent to what places the busing might occur? A. Yes, a list of schools were given. I think Olander gave them, not Mr. Johnson.

Q. Mr. Olander had the list? A. Yes.

Q. Do you recall any of the names of the schools? A. I recall Crofton and Whittier and Ebert. The core city schools were the ones I recall.

Q. What was the racial composition of those schools at that time? A. Predominantly Negro; minority.

Q. Do you recall whether Mr. Olander offered to arrange any busing to any part of the southeast Denver or southwest Denver area? A. I do not recall any.

Q. Were the parents at that meeting encouraged to [481] express an opinion as to their choice between these alternatives; mobile units and transportation? A. We were given an opportunity to vote, yes.

Q. How was this vote conducted? A. By paper ballot.

Q. And did you yourself vote? A. Yes.

Q. How did you vote? A. I voted to have the mobiles added.

Q. Did you make a decision as between mobile units and

the particular schools which had been represented to you with a choice? A. Yes, between the—

Q. Why did you make that decision? A. We had moved just recently from the core city to have our children in an integrated situation and Smith was an excellent school and I did not wish to return to Ebert, where I had just moved from.

Q. Smith was not itself integrated at that time, was it? A. When I moved.

Q. When you moved there it was? A. Yes.

Mr. Barnes: That's all I have of this witness.

Cross-Examination [482] *by Mr. Ris:*

Q. Mrs. Lewis, what year did you move to your East 36th Avenue address? A. 1962.

Q. When you were working during the summer of 1969 on the VOE program, you were a salaried employee of the school district? A. Yes.

Q. And these other people, either full-time or part-time employees you mentioned, the secretaries—they were also salaried? A. Right.

Q. And distinguishing them from the 170 volunteers? A. Yes .

Q. With regard to the schools that were discussed in the January of 1966 meeting, do you recall how many schools were actually listed as receiving schools in the busing? A. I don't remember how many were listed. I believe we were told there were—There were eleven on the list.

Q. And you remember only the three in the core area? A. I remember the ones that I recognized were in the core area.

Q. And those were the three schools you mentioned? A. Yes.

Q. So there were eight schools then that you did not [483] recognize and so it would have been outside of the core area? A. Not necessarily. Those are the ones I remember of the list, you know, that were called. And I'm not sure the entire list was called.

Q. Well, you had left the core city, so you knew what schools were there. A. Right, but I don't remember all the schools that were called.

Q. Well, all of the eleven schools were not core-area schools A. Perhaps not.

Q. In fact—that is a fact, is it not? A. I don't remember all of the schools.

Mr. Ris: That's all.

Can I ask one other question?

Q. You indicated you voted for the mobile units. The majority there voted for the mobile units, is that right? A. Yes.

Cross-examination by Mr. Brega:

Q. Mrs. Lewis, were you present at the meeting of the school board in January of 1966 when they voted to erect the three mobile units? A. Perhaps so. I'm not certain.

Q. And you're aware of the fact that that was voted [485] unanimously by all members of the board at that time? A. No.

Q. Do you think any voted against it? A. I don't know.

Q. You just don't recall? A. I don't recall.

Q. Now, between September, 1968, and September, 1969, do you know the change in racial composition at Hallett under the Hallett Plan? A. State the dates again, please.

Q. Between September, 1968, and September, 1969. A. The Hallett Plan—there were about—I really can't tell the change in racial composition. I think there were about 36 white children who came in on the voluntary basis.

Q. Do you know that in 1968 Hallett was what? About ten-percent white? A. Perhaps.

Q. And are you aware that in September of 1969, after the program was in effect one year, the white percentage was 38 percent? A. I don't know the percentages. Perhaps.

Mr. Brega: Thank you.

Mr. Ris: May I ask one other question which is still on cross?

[486] *Cross-examination by Mr. Ris* (Continued):

Q. You said your goal was 500 in and 500 out. A. This was the administration's stated goal.

Q. And that was the absolute ultimate, if you could accomplish that? A. Yes.

Q. And do you know what percentage that would make of Anglos in Hallett at that point? A. The capacity of Hallett is about 756. Or, 856, if you took the very maximum, I think.

Q. Well, what I'm getting at is—the goal of Mrs. Chambers in her group was—to get 60 percent Anglo in Hallett would require 350 Anglos to go in, and to get 50 percent Anglos would only require 300. A. Yes. This would perhaps be like 70-something percent.

Q. About 70 percent? A. (Nods affirmatively.)

Mr. Ris: Thank you.

Redirect Examination by Mr. Barnes:

Q. Mrs. Lewis, do you recall discussion by parents at the meeting that you described in January of 1966 of the alternatives that were presented to you by Mr. Olander and [487] Mr. Johnson? A. Yes.

Q. And was the subject of the discussion the choice between core schools and mobile units? A. Yes.

Q. And is it your recollection that you made a choice between and were offered a choice between core schools and mobile units? A. Yes.

Mr. Barnes: Thank you.

Recross-examination by Mr. Ris:

Q. You were not told that your children specifically were going to go to a core school? A. We weren't told which schools they would be going to. We were told that "Your children will be sent to schools where there is space available," and the schools were named. Some of the schools that were named were schools we recognized with core city schools.

Q. And some others that were named—you didn't recognize, or you didn't recognize as being the core city schools? You didn't know where your children were going? A. We did not know and we would not have known if we had known where all the schools on the list were.

Mr. Ris: Thank you.

[488] *Recross-Examination by Mr. Brega:*

Q. Did they provide you with a complete list at that time? A. Originally they did.

Q. And they said these are schools that have space available, or you can go where space is available? A. They said children will be sent where space is available.

Mr. Barnes: We have nothing further of this witness.

The Court: In other words, you couldn't select the exchange school?

The Witness: No, we could not, sir.

The Court: And I think what you're expressing is that there was a hazard that, even if there were non-core-city schools, that your children might be sent to these—the core schools that you mentioned?

The Witness: That is correct, sir.

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[490] * * *

MILDRED BIDDICK, called as a witness by the plaintiffs, being first duly sworn, on her oath testified as follows:

The Court: Will you please take the witness chair? State your name and address.

The Witness: I am Mildred Biddick. I live at 1901 East 13th Avenue.

Direct Examination by Mr. Greiner:

Q. Miss Biddick, how do you spell your last name? A. B-i-d-d-i-c-k.

Q. Miss Biddick, were you ever a principal in the Denver Public School System? A. Yes, I was principal at Fairview and Garfield from 1940 to 1951.

Q. Are those two separate structures? A. Yes.

Q. Were you principal of both of those schools at that time? A. Simultaneously.

Q. Subsequently to 1951, were you also employed as a [491] school principal? A. I was a principal at Newlon and Perry from 1951 to 1962.

Q. And, then, Newlon and Perry, those are two separate school structures? A. Yes.

Q. With respect to the schools of Fairview and Garfield, Miss Biddick, when you were principal there between 1940 and 1951, do you recall what the racial composition of those schools was? A. Between 80 and 90 percent Hispano.

Q. And what was the racial composition of Perry and Newlon schools between 1951 and 1962? A. 85 percent Anglo, 15 percent Hispano, less than 1 percent Negro.

Q. Thank you. During your tenure as a principal at Fairview or at Perry-Newlon, can you describe for the Court what the practice was as far as the disposition of requests for students to transfer into your school or out of your school? In other words, transfer from school to school. A. During the early part of those years, forties and early fifties, it was a very informal arrangement. Usually a principal would call the principal of the other school and indicate that here was a youngster whose interests would be best served by going to the other school.

[492] Q. What sort of criteria were employed to make that judgment? A. Oh, it might be the babysitter lived over in the other school district. It might be that a youngster had developed some emotional problems and would profit by getting a new start in a different situation. It might be a health reason.

Q. Now, did there come a point in time, Miss Biddick, when that policy, that informal policy was changed? A. Yes, toward the end of the 1950's, there was a tightening up of transfers, and at that time, while the transfer was still made by the arrangement between the two principals, at the

end of the school year their report, the annual report, had to include the number of pupils who were not residents of the school in which they were attending.

Q. Prior to the late 1950's, had any such report been required? A. No.

[493] Q. And to whom was that report sent? A. It was sent to pupil personnel, which had charge of all such records.

Q. That was in the central school administration? A. Yes.

Q. Now, from the time when you had to begin reporting these transfers—these were transfers into your school, if you were the reporting principal? A. Yes.

Q. After that time was the transfer policy further formalized, to your knowledge? A. Yes, and it was either in '60 or '61.

Q. And what was done at that time? A. At that time there was a formal statement of policy as to the acceptable reasons for transfer. And, if I remember, they included court-ordered transfers, transfers recommended by a doctor or psychiatrist that had to do with the emotional disturbances and so forth; cases where a youngster was physically incapacitated and stairs would be a hazard, something of that sort. And cases where baby-sitters lived in another school district.

Q. Miss Biddick, I'm handing you what's been received in evidence as Plaintiffs' Exhibit 34. Would you look that exhibit over, please, and see if you can identify it? A. From my memory, this was developed after the [494] report of the special study committee. And I have not seen it—

Q. That's Policy what of the Board of Education? A.

It's Policy—You would ask me when I didn't bring my glasses.

Q. I'm sorry. It's Policy 1226A. And that pertains to the transfer of students from outside the subdistrict? A. Yes.

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[538] * * *

GEORGE E. BARDWELL, a witness called by and on behalf of the plaintiffs, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Greiner:

The Court: Please give us your name and address.

The Witness: George E. Bardwell, 2201 South Harrison, Denver, Colorado.

By Mr. Greiner:

Q. Dr. Bardwell, you are the same Dr. Bardwell that testified in the preliminary injunction hearing, is that correct? [539] A. I am.

Mr. Greiner: Your Honor, we will be offering Dr. Bardwell as an expert witness in the fields of statistics and probability analysis. We have prepared a resume of the doctor's experience and education, being Exhibit 369. I wondered if counsel wished us to go ahead and formally qualify Dr. Bardwell or—

Mr. Ris: We will accept him as a witness in that field, period, but not in any other field. * *

The Court: Very well.

Mr. Greiner: Then 369 is accepted? We will offer it in evidence.

The Court: It is received.

(Whereupon, Plaintiffs' Exhibit 369 was received in evidence.)

Q. Dr. Bardwell, I am handing you what's been marked for identification as Plaintiffs' Exhibit 241. Would you please identify that exhibit for us? A. Yes, this exhibit shows the characteristics of pupil enrollment in Anglo and minority schools selected for study in 1968.

Q. Was that exhibit prepared by you? A. Yes, it was.

Q. Doctor, how were the schools that are shown on Exhibit 241 selected for comparative purposes? [540] A. There are 21 Anglo elementary schools and 20 minority schools. The selection process for the 21 Anglo schools and 20 minority schools was based on a probability analysis which was conducted as follows: That considering the smallest school in the area—

Q. In the District? A. —in the District, it was determined that had a probability of about one in one billion—

The Court: About what?

The Witness: —one in one billion, that this amounted to a deviation on either side of the District-wide average of approximately 60 percent; that the school that had 90 percent Anglo enrollment or more, or 30 percent Anglo enrollment or less, comprised then a probability level or equivalent to a probability level of about one in one billion. This is approximately so.

George E. Bardwell—for Plaintiffs—Voir dire

Q. Doctor, what do you mean by a probability level of one in one billion in terms of the racial composition of more than 90 percent Anglo or less than 30 percent Anglo? A. That means that the chances of a school departing from the city average by more than the stated amount had a probability of one in one billion or rarer.

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[543] * * *

Voir Dire Examination by Mr. Ris:

Q. In considering the characteristics of pupil enrollment and to arrive at this probability, you were considering the racial composition of the City and County of Denver as a [544] whole? That's your starting point? A. That's right, sir.

Q. And then with that racial—first, where did you get that? A. From the September report for 1968, which was the ethnic and racial composition of students in the District.

Q. All right. Now, were you taking up the pupil population or the overall population? A. Well, there are two figures that have to be used. One is the overall Anglo proportion for the District in the elementary schools in 1968 in the September report.

Q. You are talking about pupil population? A. Pupil population. We are not talking about citywide population.

Q. All right. A. And those figures were determined from the 1968 report.

Q. All right. A. Then the percentage Anglo composition for each school was determined. The question was then raised, given the Anglo proportion for a given school, what is the probability that its racial composition could

have arisen by chance if in fact students randomly were distributed throughout the District.

Q. So, you are comparing each school racial composition? [545] A. Yes, sir.

Q. And the racial composition of that school? A. Yes.

Q. With the citywide racial composition of all students, citywide, at that level? A. Yes, sir.

Q. In arriving at this, you do not take into consideration residential patterns of the races? A. No.

Q. Your whole basis would assume in computing your probability in the context of the school system that the races are evenly scattered throughout the School District? A. Randomly distributed.

Q. That's one of your basic assumptions? A. Yes.

Q. Which isn't a fact, we know. A. Of course, it isn't.

Q. And you do not consider the actual boundary or boundary changes? A. That's right.

Q. And you also don't consider any assignments outside of or transfers outside of the specific subdistrict? A. That's right.

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[548] • • •

By Mr. Greiner:

Q. Doctor, referring then to Exhibit 241, what does that exhibit depict with respect to the proportions of Anglo, Negro and Hispano students present first of all in the 21 Anglo schools at the elementary level? A. At the elementary level the 21 Anglo schools contain 30.9 percent of all Anglo students in the school.

Q. At the elementary level? A. At the elementary level. These same Anglo schools have 2.8 percent—

The Court: Go a little slower here now. This is all brand new to me. I think counsel has had some opportunity—some exposure to this before.

Now, the selected Anglo schools have this percentage of Anglo population in them, is that right?

The Witness: On the basis of that probability.

The Court: Okay.

Q. And what percentage of all the Negro elementary children in the District go to these selected Anglo schools, Doctor? A. 2.8 percent.

Q. And what percent of the total Hispano elementary [549] school students in the District go to these 21 schools? A. 3.2 percent.

Q. Now, Doctor, calling your attention to the 20 minority schools depicted on Exhibit 241, what percentage of the total Anglo students at the elementary level in the District go to these minority schools? A. 3.8 percent.

Q. And what percent of the total of the Negro elementary school students in the District go to these selected minority schools? A. 83.9 percent.

Q. And what percent of the total of the Hispano elementary school students go to these selected minority schools? A. 39.7 percent.

Q. Now, does Exhibit 241 also depict those proportions at the junior high school level? A. They do.

Q. Could you give us those proportions, please?

The Court: These are actual figures you're talking about?

The Witness: These are actual figures, Your Honor, yes, sir.

At the four Anglo schools—

Q. What are the four Anglo schools? [550] A. The four Anglo schools are Hill, John F. Kennedy, Merrill and Thomas Jefferson. The four minority schools are Baker, Cole, Morey and Smiley.

Q. Could you then give us the proportions? A. At the four Anglo schools, 40.6 percent of all Anglo students in the School District attend those four Anglo schools. Similarly, 1.2 percent of all Negro students in the School District attend those four Anglo junior high schools. And, 3.1 percent of all Hispano students in the District attend those four Anglo schools.

Q. Now, turning your attention to the minority junior high schools, what are the proportions? A. At the four minority schools the percentage of all Anglo students in the School District that attend those four minority schools is 5.4 percent. The percentage of all Negro students in the School District which attend those four minority schools, 86.8 percent. And the percentage of all Hispano students in the District that attend the four minority schools is 31.0 percent.

Q. Now, does Exhibit 241 also depict similar information with respect to the senior high school level? A. It does.

Q. What are the six senior high schools depicted on Exhibit 241? A. The three Anglo senior high schools, George [551] Washington, John F. Kennedy and Thomas Jefferson. The three minority senior high schools are East, Manual and West.

Q. And then turning your attention first to the three Anglo senior high schools, Doctor, would you give us the proportions contained in those three schools? A. The per-

centage of all Anglo students in the School District that attend the three Anglo schools, 38.3. The percentage of all Negro students in the School District attending these same Anglo schools, 3.6 percent. The percentage of all Hispano students in the School District that attend the three Anglo schools, 2.7 percent.

Q. And then could you give us the data for the minority senior high schools? A. At the three minority senior high schools, 17.7 percent of all Anglo students in the School District attend those minority schools. The percentage of all Negro students in the School District that attend the three minority senior high schools, 95.7 percent. And the percentage of all Hispano students in the School District that attend these three minority schools, 42.7 percent.

Q. Now, Doctor, did you compute individual probability levels for each of these 41 schools? A. I did.

Q. I am handing you what's been marked for identification as Plaintiffs' Exhibit 386 and ask you to identify that. [552] A. Exhibit 386 is a probability analysis that has been made on a computer school by school for all the elementary schools.

Q. Does it also include a probability analysis as to the racial composition of each of the junior and senior high schools? A. It does.

Mr. Greiner: Your Honor, we would offer Exhibit 386.

The Court: I assume that this exhibit has been brought forward as far as counsel are concerned, before?

Mr. Greiner: Yes, Your Honor.

Mr. Ris: Could we have just a moment, Your Honor?

The Court: All right.

Voir Dire Examination by Mr. Ris:

Q. Dr. Bardwell, is this probability analysis based upon the same factors and omitting the same factors as we discussed on Exhibit 241? A. They are.

Mr. Ris: We would object to it for the same reason as the objection I made as to 241.

The Court: Well, I just don't know enough about it to rule on it at this stage. I mean, I can't—it doesn't tell the story on the face of it, I wouldn't say, particularly.

[553] *Direct Examination by Mr. Greiner* (Cont'd):

Q. Dr. Bardwell, referring your attention to Exhibit 241, what is one of the elementary schools listed on 241? A. Ash Grove is one of the 21 selected Anglo schools.

Q. Now, turning your attention to Exhibit 386, does that exhibit contain a separately computed probability analysis for that school? A. It does.

Q. And it shows the range or the probability that Ash Grove would have of racial composition—that it in fact has, is that correct? A. That's right, it does.

Q. And how was that computed, Doctor? A. Based upon the size of Ash Grove, containing 801 students in 1968; the probability that its racial composition could have arisen by chance is one in ten to the hundredth power.

Q. Now, does Exhibit 386 contain similar calculations for each of the schools in the School District? A. It does.

The Court: I think it would be of some value to us to know what information you proceed on in arriving at this result. What do you feed into this computer in order to get this?

[554] The Witness: All right.

The Court: At this stage I think it would be of some value, you know.

The Witness: Excuse me?

The Court: At this stage I think it would be of some value for us to know this.

The Witness: All right.

The Court: What are the factors which contribute to this conclusion?

The Witness: The assumption, Your Honor, that was made in this particular case is that we raise the question as to the departure of each school's Anglo composition from the city average.

Q. Now, at the elementary school level what range of departure did you use? A. 62.8 percent is approximately the average Anglo proportion for the entire District.

Q. And at the elementary schools? A. At the elementary school level.

Q. How did you arrive at the 90 percent Anglo or less than 30 percent Anglo? A. In order to be most conservative, that is, all probabilities that would have been calculated would have been rarer than one in one billion, the smallest school in the District was used as a guide to establish the deviation from [555] the city proportion. That deviation was approximately 30 percent.

Q. Now, what does that mean in terms, Doctor, of the approximately 62 percent Anglo racial composition of all

elementary school students in the District? What do you do with that 60 percent? A. This roughly meant that a school that had an Anglo proportion of 90 percent or more, or a school—an elementary school that had an Anglo proportion of 30 percent or less would have constituted a criterion for classification of those schools into the 21 Anglo schools and the 20 minority schools. A school, therefore, that had an Anglo composition 30 percent or less would have fallen into the 20 minority group of schools. A school that had an Anglo composition of 90 percent or more would have fallen into the group selected for study at the 21 Anglo schools.

Q. Now, at the junior high school level, did you use that same less-than-30-percent Anglo, more-than-90-percent Anglo standard? A. This would have been given for the junior high schools and senior high schools.

Q. Why? A. Because the size of each school, the smallest school for the junior high school is considerably larger than the smallest school in the elementary group. Similar consideration [556] applies to the senior high schools, where the minimum sized school for being most conservative in this estimate is considerably larger than for the elementary schools.

Q. Now, besides the smallest sized school at the junior and senior high school levels, did you take into account the Anglo composition at the junior high school level throughout the District, for example? A. Yes, we did.

Q. And is that different than the Anglo composition at the elementary school level? A. It is, about 10 percent more.

Q. So it is what throughout the District, the Anglo composition of the junior high schools? A. Roughly 70 percent.

The Court: Which?

The Witness: Roughly 70 percent.

Q. Did you also take into account with regard to the senior high schools the District-wide Anglo proportion in the senior high schools? A. Yes, we did.

Q. Did that differ from the junior high schools? A. It did.

Q. What was it? A. Roughly 75 percent.

Q. Then taking these two factors, the minimum school [557] size and the percent Anglo composition at that level, what did you do in computing the probability of racial composition, first of all, of the selected junior high schools? A. Exactly the same procedure was used as in the case of the elementary schools. A percentage deviation from the citywide average was calculated.

Q. Now, what was the percentage—You have stated it was more than 90 percent Anglo or less than 30 percent Anglo at the elementary level. What was it at the junior high school level? A. I think it's roughly 18 percent.

Q. So a school which was more than what percent Anglo was selected? A. 90 percent.

Q. And a school which was less than what percent Anglo was selected at the junior high school level? A. It would be about 55 percent.

Q. And then what were the ranges at the senior high school level? A. Senior high schools were roughly 15 percent in either direction. 15 percent from the City average of roughly 75, which would make it 90 percent.

Q. And a school of more than 90 percent Anglo? A. More than 90 percent Anglo and in the other case less than 60 percent.

[558] Q. Now, in each instance at the elementary, the junior and the senior high school levels, Doctor, taking into consideration the actual racial composition of the selected school, did the probability ever become greater than one in one billion? A. By all means. The one in one billion is a very conservative estimate of what this probability would have been for every single school.

Q. For example, referring to Exhibit 241, would you select a junior high school? A. Yes, let us select Cole.

[559] Q. All right. And then referring to Exhibit 386, have you computed the actual probability at Cole? A. Yes.

Q. And what is it? A. The probability that Cole's racial composition could have arisen by chance alone is the astronomical figure of one in ten to the 554th power.

Q. And what's another junior high school listed on Exhibit 241? A. Morey.

Q. And what is the probability of Morey's actual racial composition? A. The probability that Morey's actual percentage Anglo could have deviated from the city proportion by the amount that it actually did, that probability is one in ten to the 146th power.

Q. Now, with respect to the senior high schools, one of the senior high schools selected was East? A. East.

The Court: What is your definition of chance?

The Witness: Excuse me, sir?

The Court: What is your definition of chance? I mean, what is the difference between volitional action and chance? I think we ought to have some definitions before we go very far on this, so we know what he is talking about.

[560] The Witness: Yes.

The Court: What is your conception of pure chance?

The Witness: Of pure chance?

The Court: Yes.

The Witness: Well, Your Honor, even from a—

The Court: As opposed—what would be the other elements?

The Witness: As something more common? All right.

The Court: What would non-chance be?

The Witness: Non-chance? A statistical — the statistician, I think, has a standard for that, and he would generally conclude that anything that occurs with a probability of 65 times in a hundred approximately, that this is a non-chance occurrence. In other words, we would expect this sort of thing.

The Court: What produces the non-chance occurrence, according to your conception and your knowledge?

The Witness: In my view, sir, there would be a number of factors that would contribute to an assignable cause that would be outside of the chance calculation that we have made here, that we can actually assign a cause to it.

Would you like me to elaborate on my opinion of what these are?

The Court: I just want you to state what your [561] conception is.

Mr. Greiner: Your Honor, I think I may be able to help the Court by asking the witness whether or not Exhibit 386 purports to make any judgments as to cause. A. None at all.

Q. That 386 simply eliminates chance as cause? A. It is an attempt to measure the probability that a school's racial composition could have occurred, the actual composition that it did have, and that, from a statistical point of view, if this chance is remote enough, then one would have to say that there are non-chance causes that contribute to the racial composition of that school.

Q. But 386 doesn't reflect any of these non-chance causes? A. It does not.

Q. Nor does it attempt to identify any of them, is that correct? A. That's right.

Mr. Greiner: In other words, Your Honor, the question—

The Court: The chance then means an occurrence without the intervention of any positive or affirmative force, just falling from the skies?

The Witness: Well, these probabilities are so rare, Your Honor, and in fact so astronomically small, in [562] my experience I have never been in a position prior to this time of calculating probabilities that were so remote and that I would simply have to conclude on the basis of that analysis that there were causes that contributed to that racial composition of each one of these schools that, by even the remotest stretch of the imagination, could not have occurred by chance.

The Court: All right. By chance is by chance, but we will just be patient now and listen. At least the next five minutes, we promise not to interrupt.

Mr. Greiner: We are offering Exhibit 386, Your Honor, which simply purports to show the individual

probability calculations for each school in the district as described.

The Court: Well, we will take that over the objection of the intervenors in order to get this picture.

(Whereupon, Plaintiffs' Exhibit 386 was received in evidence.)

Q. Dr. Bardwell, we have already in evidence in this case exhibits which give for the school district as a whole at the elementary school level the ethnic distribution by number and percentage of the pupils in the school district. Now, have you also prepared exhibits which purport to show the ethnic distribution in, first of all, the 20 minority schools and the 21 Anglo schools depicted on Exhibit 241? [563] A. I have.

Q. I hand you what has been marked for identification as Exhibits 249 through 252, and could you identify those exhibits for us, please? A. Yes. Exhibit 249 is the ethnic distribution of pupils for the 20 minority schools for the years 1963 through '68.

Exhibit 250 is the ethnic distribution expressed as a percentage for the 20 minority schools for the years 1963 through '68.

Exhibit 251 is the ethnic distribution of pupils for the 21 Anglo schools expressed as a number of students for the years 1963 through 1968.

Exhibit 252 is the ethnic distribution of pupils expressed as a percentage for the years 1963 through 1968.

Q. For which schools? A. For the 21 Anglo schools.

Mr. Greiner: Your Honor, the authenticity of Exhibits 249 through 252 has been stipulated to as far

as their accuracy is concerned and we would offer them in evidence at this time.

Mr. Ris: If the Court please, just a couple of questions on voir dire.

Voir Dire Examination by Mr. Ris:

[564] Q. Dr. Bardwell, this group of exhibits, 249 to 252, inclusive, in turn are based upon Exhibits 241 and 386, are they not?

Exhibits 241 and 386 are your foundation exhibits? A. That's right.

Mr. Ris: By reason of the objections made to those two exhibits, we would object to these two as not having the proper foundation. Other than that, we have no objection to their admissibility and we are going to have a whole group of exhibits, I presume, at the elementary and senior high level along the same line and with the same foundation. Is that correct, Mr. Greiner?

Mr. Greiner: Well, I don't know what counsel means by foundation, Your Honor. The source of the figures in these exhibits comes from the computer print-outs that are already in evidence.

I take it what counsel is referring to is the composition of the sample being reflected in the exhibits, if that's what he objects to.

Mr. Ris: Well, with respect to the numbers on these exhibits of Anglos, Negroes and Hispanos, we do not question the accuracy of those numbers, not at all.

The Court: You are objecting to the purpose for which this is being offered?

Mr. Ris: Well, the figures shown on here are [565] not disputed, by again, the relationship goes back to the two earlier exhibits, and by reason of the inadequate foundation on those, they taint these exhibits, and that's really our only objection. It relates back to those other exhibits, and with respect to the other print-outs you have then, and since they have the same relationship, we are going to have continuing objection, and yet I can just make them now as to the whole series of junior high and senior high that you are going to offer, first, ethnic, and then, I presume—

Mr. Greiner: Faculty.

Mr. Ris: Faculty and so forth.

The Court: These reveal actual compositions of these individual schools?

The Witness: Yes.

The Court: Elementary, Junor High—

Mr. Ris: Yes, sir, and we don't question these figures for the composition. Just the going back to what they are comparing to.

Mr. Brega: We have no objection to these exhibits, Your Honor.

The Court: The exhibits will be received, 249 through 252.

(Whereupon, Plaintiffs' Exhibits 249, 250, 251 and 252 were received in evidence.)

[566] *Direct Examination by Mr. Greiner* (Continued):

Q. Now, Dr. Bardwell, with respect to the comparison of the 21 Anglo schools and the 20 minority schools as to their racial composition, have you prepared a chart which

illustrates the data contained in Exhibits 249 through 252? A. Yes.

Q. And is that Exhibit 253? A. This is Exhibit 253.

Q. And what does 253 purport to depict? A. It depicts the percentage Anglo in the 20 minority schools and the 21 Anglo elementary schools for the years 1963 through 1968.

Q. And is Exhibit 253 then based on the data in Exhibit 241 through 252? A. That's correct.

The Court: This is a graphic study?

The Witness: Yes, this is a graphic depiction of the materials that are in the preceding exhibits that are on your desk.

Mr. Greiner: Your Honor, we would offer Exhibit 253 at this time. I believe the authenticity of the exhibit again has been stipulated to.

Mr. Ris: That's correct. Our objection would merely go back to the same as before.

[567] The Court: Do you have any objection?

Mr. Brega: No objection, Your Honor.

The Court: Exhibit 253 is received.

(Whereupon, Plaintiffs' Exhibit 253 was received in evidence.)

Q. Calling your attention then to Exhibit 253, Doctor, what does that exhibit show as to, first of all, the Anglo population over this time period in the Anglo schools? For example, in the year 1964, what percentage of the Anglo students in the elementary schools of the district were in these Anglo schools? A. Percentage Anglo students that were in the 21 Anglo schools in 1964, around 90 percent—excuse me, 95 percent.

Q. And what was it, for example, in 1966? A. In 1966,

somewhat less. I would estimate from the reading of the chart it would be around 92 percent.

Q. And what was the last year depicted on the exhibit? A. 1968.

Q. And what is the percentage by 1968? A. I would estimate on the basis of the intersection of these two lines it would be about 92 percent.

Q. Now, what similarly is shown with regard to the 20 minority schools on the exhibit? A. In the case of the 20 minority schools for comparable years, in 1964 I would estimate about 15 percent. In [568] 1966, I would estimate about 13 percent, and in about 1968 I would estimate about the same amount.

Q. Thirteen? A. Ten percent.

Q. Ten percent. That's ten percent of what? A. This would mean, in the 20 minority schools selected for study, that that racial composition of those 20 minority schools in 1968, for example, was ten percent Anglo.

Q. Now, similarly, Doctor, have you prepared exhibits with respect to the pupil ethnic distribution in the selected junior high schools? A. Yes, I have.

Q. Calling your attention, Doctor, to what's been marked for identification as Plaintiffs' Exhibits 280 through 283, would you please identify those exhibits? A. Exhibit 280 is a computer print-out showing the ethnic distribution of pupils by number of pupils for the four selected minority junior high schools.

Exhibit 281 is the ethnic distribution expressed as a percentage of the four minority junior high schools selected for study.

Exhibit 282 is the ethnic distribution of students by number of students for the four selected Anglo junior high schools for the years 1963 to '68.

The preceding two exhibits also cover the years [569] 1963 through '68, for the four selected Anglo junior high schools.

Q. Referring to Exhibits 280 through 283, Doctor, what is the source of the figures set forth in those exhibits? A. The source of these figures of the computer printouts have been submitted as exhibits covering all junior high schools, and I am sorry that I don't know the exhibit number.

Q. And the figures depicted on Exhibits 280 through 283 are the actual figures for the school years indicated? A. That is correct.

Mr. Greiner: Your Honor, we would offer Exhibits 280 through 283.

[570] Mr. Ris: We do not dispute the figures. We object to it for the same reasons as we objected to Exhibits 249 through 252.

Mr. Brega: Same objection.

The Court: They will be received, 280 through 283.

(Whereupon, Plaintiffs' Exhibits 280 through 283 were received in evidence.)

Q. Doctor, have you also prepared a chart which illustrates the information covered by Exhibits 280 through 283? A. We have.

Q. Is that Exhibit 284? A. That is Exhibit 284.

Q. Was that exhibit prepared by you? A. Yes, sir.

Q. And does it in fact reflect the information in Exhibits 280 through 283? A. It does.

Mr. Greiner: Your Honor, this is another exhibit, the authenticity of which has been stipulated to, and

we would offer it in evidence at this time.

Mr. Ris: Same objection.

The Court: The number on that one?

Mr. Greiner: Exhibit 284, Your Honor.

Mr. Brega: Same objection.

The Court: It will be received.

[571] (Whereupon, Plaintiffs' Exhibit 284 was received in evidence.)

Q. Exhibit 284 depicts what, Dr. Bardwell? A. Shows the percent Anglo students for the years 1963 through '68 for the selected four Anglo junior high schools.

The Court: This is percentagewise?

The Witness: Percentagewise, that's right, sir, and the percent Anglo students for the selected minority schools.

Q. All right. And the first year depicted on Exhibit 284, Dr. Bardwell, what was the percent Anglo composition in the Anglo junior high schools? A. Very nearly 100 percent.

Q. And what was it in the selected minority junior high schools? A. Approximately 30 percent.

Q. And by 1968, Doctor, as depicted in Exhibit 284, what was the Anglo percentage in the selected Anglo schools? A. 1968, the percentage is roughly 98 percent.

Q. And what was it in the minority schools? A. For the minority schools, the percentage is roughly 17, 18 percent.

The Court: Now, this is the year '68?

The Witness: 1968.

Q. Next, Dr. Bardwell, have you prepared exhibits [572] showing the ethnic and racial composition of the selected senior high schools? A. Yes.

Q. I have handed you what has been marked for identification as Plaintiffs' Exhibits 309 through 312. Could you identify those for us for the record. A. Exhibit 309 shows the ethnic distribution of students by number of students for the years 1963 through '68 for the three selected minority senior high schools. Exhibit 310—

Q. Does that show the same information? A. Shows the same information except as a percentage.

Q. All right, 311. A. 311 is the distribution, ethnic distribution of students by number, for 1963 through '68 for the three selected Anglo senior high schools.

Q Then is 312 the same thing but expressed as a percent? A. 312 is exactly the same, expressed as a percent.

[573] Mr. Greiner: Your Honor, we would offer Exhibits 309 through 312 at this time.

Mr. Ris: We wish to make the same objection as to Exhibits 249 through 252.

Mr. Brega: Same objection.

The Court: 309 through 312 will be received.

(Whereupon, Plaintiffs' Exhibits 309, 310, 311 and 312 were received in evidence.)

Q. Doctor, similarly, have you prepared a chart which illustrates the information contained in Exhibits 309 through 312? A. Yes, we have.

Q. Is that Exhibit 313? A. This is Exhibit 313.

Q. Does Exhibit 313 accurately depict the information contained in Exhibits 309 through 312? A. It does.

Mr. Greiner: Your Honor, we would offer 313.

Mr. Ris: The same objection as to 309 through 312.

Mr. Brega: Same objection.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 313 was received in evidence.)

Q. What does Exhibit 313 show as to the Anglo [574] percentage in the Anglo senior high schools as of 1964? A. 1964, the percentage Anglo students in the selected schools was very close to 98 percent.

Q. And what does it show in that year as to the percentage Anglo students in the minority schools? A. It would appear to be close to 55 percent.

Q. Then, calling your attention to the year 1968 as depicted on Exhibit 313, what is the percentage shown there for the Anglo schools? A. The Anglo percent—

The Court: What was that figure in the minority school?

The Witness: Yes, roughly 55 percent.

For 1968 the percentage Anglo students for the selected Anglo schools would be approximately 96 percent.

Q. And what is shown as to the minority schools? A. For the minority schools the percentage Anglo students would be approximately 40 percent.

Q. Now, Doctor, have you prepared exhibits with respect to the certain elements with regard to the faculty? And first of all, in the elementary schools of this district? A. Yes, we have.

Q. I have handed you what's been marked for identification as Plaintiffs' Exhibit 254 through 257. Calling your attention first to Exhibit 254, what does that exhibit purport [575] to depict? A. This depicts the ethnic distribution of the faculty by number for the years 1964 through 1968 for the selected minority schools.

Q. And then Exhibit 255 is the same information but expressed as a percentage? A. That's correct.

Q. Then what is 256? A. 256 is the ethnic distribution of the faculty by number for the years 1964 through 1968 for the 21 selected Anglo schools.

Q. And then Exhibit 257 is the same information but expressed as a percentage, is that correct? A. That is correct.

Mr. Greiner: Your Honor, we would offer Exhibits 254 through 257 at this time.

Mr. Ris: If the Court please, this gets into a different field not involving pupil segregation and we would therefore object to these exhibits and to the further line of evidence pertaining to faculty on the grounds of the lack of materiality.

The only position that I can recall at the moment is the Cook County case in which the ethnic distribution of faculty was deemed by a court to be a major factor and that involved virtually 100 percent of a racial minority [576] school which was also approximately one hundred percent, and this does not—this not being the case in Denver, we don't think it's material. So we would object to not only the exhibits but all the exhibits and testimony pertaining to ethnic distribution of faculty and would further object to this for the same reasons as we objected to 249 and 252.

The Court: What's the purpose of this offer for the record?

Mr. Greiner: For the record, Your Honor, the exhibits depict the overall racial composition of the faculty throughout the school district as a whole. Those exhibits are already in evidence. And they establish, for example, that at the elementary school level, as I recall there was about 90-percent Negro faculty throughout the school district. What these exhibits tendered now show is that in the minority schools there is, we contend, a disproportionate concentration of minority faculty—

The Court: This goes then to the character of the evidence being offered in so-called minority schools?

Mr. Greiner: This goes to the question of intent, Your Honor, and it shows, we believe, that the school district has assigned—

The Court: Your offer—you're offering it— [577] That's what I really asked you. —insofar as it sheds some light on the state of mind of the school board?

Mr. Greiner: Yes, Your Honor. It shows that the administration has consciously assigned minority teachers to these minority schools. There is no, I think, as the Court recalls, there is no neighborhood faculty policy and you can't explain the disproportionate concentration of these minority faculty in minority schools on any basis of adventitious geography. This is, we contend, a clear example of assignment on the basis of race and lends credence, we believe, to the overall contention that the school district has intentionally created and maintained

these minority schools. Furthermore, the concentration of minority faculty in a minority school simply confirms—

The Court: Okay. We will receive these based upon your statement that they are offered for the purpose of showing that there exists a process of classification that is conscious.

Mr. Greiner: Thank you, Your Honor.

(Whereupon, Plaintiffs' Exhibit 254, 255, 256 and 257 were received in evidence.)

Q. Dr. Bardwell, with respect to Exhibits 254 through 257, have you also prepared a series of exhibits showing the faculty experience at these selected minority and Anglo [578] schools?

The Court: What number is this?

Mr. Greiner: Referring now to Exhibit 259 through 262.

A. Exhibit 259 is a tabulation computer print-out showing the experience of the faculty in terms of number of teachers for the 20 minority schools for the years 1964 through 1968 according to whether or not that faculty person has no Denver Public Schools experience; whether they are on probation.

Q. What does probation mean, Doctor? A. That means less than three years of experience. And those teachers that have ten or more years of experience.

In addition to that, the median years of Denver Public Schools experience is shown for each of these minority schools.

Q. How was the median years' experience calculated?

A. The median years' experience was calculated by taking the distribution of experience of all teachers in each one of these schools and calculating that year which divides the faculty in terms of its experience in half.

Q. Then what does the next exhibit depict? The same information expressed as a percentage, is that correct? A. That is correct.

Q. And then the next exhibit is what? [579] A. The next exhibit is 261 and this shows the faculty experience by number for the 21 Anglo elementary schools with the same classifications of experience as previously mentioned for the years 1964 through 1968.

Q. Then the next exhibit is what number? A. The next exhibit is 262.

Q. Does it reflect the same information except expressed as a percentage? A. That is correct.

Mr. Greiner: Your Honor, we would offer Exhibits 259 through 262 at this time.

Voir Dire Examination by Mr. Ris:

Q. Dr. Bardwell, you know from other evidence that has already been brought into this case that a substantial percentage of newly-employed teachers have had experience in other school districts, do you not? A. Substantial percentage?

Q. Yes. A. (No answer.)

Q. Are you hung up on the word "substantial"? A. I sure am.

Q All right. That there is a percentage of newly-employed teachers in the Denver school system who have had previous teaching experience? [580] A. I agree.

Q. Do you recall what that percentage is? A. No, I do not.

Q. Would 30 percent refresh your recollection? A. Not necessarily.

Q. Pardon? A. It wouldn't, no.

Q. Well, whatever the percentage is, you have not taken that into consideration in your computations here at all, have you? A. That's quite correct.

Q. So when you're talking about experience, if a teacher here taught ten years in some other system and then was hired in Denver, that's not reflected here at all? A. That is correct.

Q. So that's not shown in your ten or more years? A. That's correct.

Q. It's not shown in your median years? A. That's correct. That information we were unable to get by race.

Q. Whether you were able to get it or not, it's not in there? It's not in your computer program? Right? A. No, it's not in there.

Mr. Ris: We have no objection to the mathematics [581] as they're shown on that, but we would have the same objections that we have made to the 252 through 257 and 249 through 252.

Mr. Brega: Same objection, Your Honor.

The Court: The objections will be overruled.

(Whereupon, Plaintiffs' Exhibits 259, 260, 261 and 262 were received in evidence.)

Direct Examination by Mr. Greiner (Continued):

Q. Doctor, I neglected to ask you with respect to the previous sets of Exhibits—have you prepared a chart which reflects the information contained in Exhibits 252 through 257? A. Yes.

Q. What's the number of that exhibit? A. Exhibit 258.

Mr. Greiner: Your Honor, we would offer Exhibit 258 at this time.

Mr. Ris: Same objection as to Exhibit 254 through 257.

The Court: Very well. We will receive 258.

(Whereupon, Plaintiffs' Exhibit 258 was received in evidence.)

Q. Doctor, calling your attention to Exhibit 258, what does 258 depict? [582] A. 258 depicts by percent minority school teachers located in the minority and Anglo schools selected for study for the years 1964 through 1968.

Q. Now, in the first—the first year depicted is 1964? A. That's correct.

Q. What is shown for the minority teachers in the Anglo schools? A. In 1964 there were approximately two percent of the teachers in the 21 Anglo schools that were minority teachers.

Q. What was the percentage of minority teachers in the minority schools? A. Around 28 percent.

Q. Do you recall, Doctor, in 1964 what the percentage of Negro teachers was, districtwide, at the elementary school level? A. I don't know. I would have to consult a previous exhibit.

Q. And by the year 1968, Doctor, what was the percentage of minority teachers in the Anglo schools selected? A. In 1968 the percentage of minority school teachers in the 21 Anglo schools was approximately that in 1964, around two percent.

Q. And what was the percentage of minority faculty in

[583] the selected minority schools by 1968? A. About 22 percent in the minority schools.

Q. Doctor, with respect to Exhibits 259 through 262, which have been received in evidence, relating to teacher experience in the elementary schools, have you also prepared a series of charts which graphically depict the information in those tables? A. Yes, we have.

Q. Handing you first what's been marked for identification as Exhibit 263, can you identify that for us, please? A. Yes, this shows by percent of total teachers in those 21 Anglo schools and 20 minority schools those with no Denver Public Schools experience for the years 1964 through 1968.

Mr. Greiner: Your Honor, we would offer 263 at this time. I believe, again, the accuracy of the figures shown on 263 has been stipulated to.

Your Honor, we are going to first identify this whole series of exhibits because counsel has indicated his objection would be the same to all of them.

The Court: Good.

Q. The next exhibit is 264. Would you tell us what Exhibit 264 depicts, Doctor? A. 264 is a graph showing for the 20 minority schools and 21 Anglo schools the percent of all teachers in those [584] schools that are so-called probationary for the years 1964 through 1968.

Q. And then Exhibit 265 depicts what, Doctor? A. 265 shows for the same two groups of schools the Anglo and minority schools, for the years 1964 through 1968, the percentage of all teachers in those schools with ten or more years of Denver Public Schools experience.

Q. And then Exhibits 266 depicts what? A. 266 shows for the same set of years, 1964 through 1968, for the same

two groups of schools, the median years of Denver Public Schools experience at elementary schools for the 21 Anglo schools and 20 minority schools.

Mr. Greiner: Your Honor, we would offer Exhibits 263 through 266 at this time.

Mr. Ris: To which we would make the same objections as to 259 through 262 from which they were taken.

The Court: Do you object?

Mr. Brega: Same objection.

The Court: Very well. 263 through 266 are received at this time.

(Whereupon, Plaintiffs' Exhibits 263, 264, 265 and 266 were received in evidence.)

Q. First of all, calling your attention, Doctor, to Exhibit 266, that is the exhibit which depicts the median years' experience? [585] A. That's correct.

Q. In 1964 what was the median years' experience in Anglo schools? A. Approximately eight years' median experience.

Q. What was it in the minority schools for that year? A. Approxmiately three.

Q. And in the year 1966, what was the median years' experience of teachers in the selected Anglo schools? A. Approximately nine years.

The Court: What year are you talking about?

Mr. Greiner: 1966, Your Honor.

Q. What was it in the minority schools? A. Approximately four.

Q. And then, in 1968, what was the median years of teacher experience in the selected Anglo schools? A. Approximately nine and a half.

Q. And what was it in the selected minority schools? A. Approximately four.

[586] Q. Calling your attention next, Doctor, to Exhibit 265, which depicts teachers with ten or more years of Denver Public School experience, in 1964, Doctor, what was the percentage of such teachers in the selected Anglo schools? A. Approximately 41 percent of the teachers had ten or more years' DPS experience.

Q. And what percent of teachers in 1964 in the minority schools had such experience? A. Approximately 15 percent.

Q. And by 1968, Doctor, what percentage of teachers in the selected Anglo schools had ten or more years DPS experience? A. About 45 percent.

Q. And what was the percentage of such experienced teachers in the selected minority schools? A. Approximately 18 percent.

Q. Calling your attention, Doctor, to Exhibit 264, dealing with probationary teachers in the elementary schools selected, what does that show the 20 minority schools' percentage of probationary teachers as of 1964 was? A. Roughly 45 percent of all the teachers in those 20 minority schools were on probation.

Q. And what is the percentage in the selected Anglo elementary schools? A. Approximately 22 percent.

Q. Now, by 1968, Doctor, what percentage of the teachers [587] in the minority schools were probationary according to Exhibit 264? A. About 47 percent.

Q. And what percentage of the teachers in the selected Anglo schools were probationary teachers? A. About 25 percent.

Q. Next, calling your attention, Doctor, to Exhibit 263, which depicts teachers with no previous DPS experience in 1964, what percentage of the teachers in the selected minority schools had no previous DPS experience? A. About 14 percent.

Q. And what was the comparable percentage in the selected Anglo elementary schools? A. About six.

Q. Turning your attention to the year 1968, by that year what percentage of the teachers in the minority schools had had no previous Denver Public School experience? A. About 24 percent.

Q. And what was the comparable percentage in the selected Anglo schools? A. Ten percent.

Q. I am handing you what has been marked for identification, Doctor, as Plaintiffs' Exhibit 267. Can you identify that for us? A. Yes, Exhibit 267 shows a comparison between the [588] 20 minority schools and Traylor Elementary School in terms of the median years of teacher experience.

Q. Is that for a given year, Doctor? A. Yes.

Q. What year? A. 1968.

Q. Why was 1968 selected? A. That was the year in which Traylor opened.

Q. Why are you using Traylor in this comparison? A. Well, it happened to be a school that opened very recently and happened to be a fairly large school. It is a school in southwest Denver, and it appeared to be rather unusual that an elementary school opening in 1968 would have a median year of teach experience of 11—

Mr. Ris: Pardon me.

Mr. Greiner: Don't read the figures yet, Doctor.

Mr. Ris: That's comment and opinion by the wit-

ness involving educational matter. I move that part be stricken.

The Court: Sustained. He asked him why he picked out Traylor, and I think he already answered it, anyhow.

Mr. Greiner: All right, Your Honor, we would offer at this time Exhibit 267.

Mr. Ris: No objection, except again going back to reference to the 20 minority schools, which takes us back to the objection we made to Exhibits 249 through 252.

[589] Mr. Brega: Same objection.

The Court: Exhibit 267 is received.

(Whereupon, Plaintiffs' Exhibit 267 was received in evidence.)

Q. Referring your attention to Exhibit 267, in the year 1968, what was the median years' experience of teachers in the selected 20 minority schools? A. Approximately four years.

Q. What was the median years' experience in Traylor elementary school when it opened? A. Over eleven and a half.

Q. Doctor, with respect to the junior high school faculty, have you prepared a similar set of exhibits showing the ethnic distribution of the faculty expressed as a percent and a number in the selected Anglo and minority junior high schools? A. We have.

Q. And what are those exhibit numbers, please. A. Exhibit 285 shows the faculty by number for the years '64 through '68 for the four minority junior high schools. Exhibit 286 is a similar tabulation by percentage for those minority schools. Exhibit 287 is the distribution of the

faculty by ethnicity for the four Anglo junior high schools for '64 through '68.

Q. That's expressed as a number? [590] A. Expressed as a number.

Q. And Exhibit 288 is the same data expressed as a percentage? A. That's correct.

Mr. Greiner: Your Honor, we would offer Exhibits 285 through 288 at this time.

Mr. Ris: Same objections as to 249 through 252 and 254 through 257.

Mr. Brega: Same objection.

The Court: The objection will be overruled; Exhibits 285 through 288 are received.

(Whereupon, Plaintiffs' Exhibits 285 through 288 were received in evidence.)

Q. Doctor, similarly, have you prepared a chart which purports to depict the information contained in Exhibits 285 through 288? A. We have.

Q. Is that Plaintiffs' Exhibit 289? A. Plaintiffs' Exhibit 289.

Q. And that purports to depict what? A. It shows the percentage of minority school teachers in the selected minority schools and selected Anglo schools for 1964 through '68.

Mr. Greiner: Your Honor, we offer Plaintiffs' Exhibit 289.

[591] Mr. Ris: Same objection as to 249 through 252 and 254 through 257.

The Court: Exhibit 289 will be received.

(Whereupon, Plaintiffs' Exhibit 289 was received in evidence.)

Q. Doctor, calling your attention to Exhibit 289, in the year 1964, first of all, with respect to the minority schools, what does Exhibit 289 show as to the percentage of minority school teachers in the minority junior high schools selected? A. Twenty percent of the teachers were minority teachers in those schools.

Q. And what about the percentage of minority teachers in the selected Anglo junior high schools? A. About 2 percent.

Q. Now, by the year 1968, Doctor, what was the percentage of minority teachers in the minority junior high schools? A. Approximately 25 percent.

Q. It had increased then since 1964? A. From 20 percent to 25.

Q. What was the percentage of the minority teachers in the selected Anglo junior high schools? A. Approximately 3 percent.

Q. Doctor, have you also prepared a similar set of [592] exhibits with respect to faculty experience in the selected junior high schools? A. That's correct.

Q. And handing you what has been marked for identification as Plaintiffs' Exhibits 290 through 293, I ask you if you can identfy those for us. A. Exhibit 290 is a distribution of the faculty by number, having various categories of experience, for the years 1964 through '68.

Q. What are the categories depicted on the exhibit, Doctor? A. Categories of experience are No Denver Public School Experience, Those Teachers that are on Probation, and Those that have Ten or More Years of Experience, and the Median Years of Teacher Experience.

Q. This then is the same information previously shown for the selected elementary schools? A. That's correct.

Q. And Exhibit 290 depicts it as a number, is that correct? A. Exhibit 290 depicts that information as a number.

Q. And Exhibit 291 depicts it by percent? A. That is correct.

Q. And what does Exhibit 292 depict? A. Exhibit 292 depicts the same information for the [593] four Anglo junior high schools.

Q. And Exhibit 293 depicts it just as a percentage, is that correct? A. The same information as a percent.

Mr. Greiner: We offer Exhibits 290 through 293 at this time, Your Honor.

Mr. Ris: Same objection as to 254 to 257 and 249 to 251.

Mr. Brega: Same objection.

The Court: The objections will be overruled. Exhibits 290 through 293 will be received.

(Whereupon, Plaintiffs' Exhibits 290 through 293 were received in evidence.)

Q. Now, Dr. Bardwell, similarly, have you prepared a series of charts illustrating the information contained in Exhibits 290 through 293? A. Yes.

Q. First of all, handing you what has been marked for identification as Exhibit 294, would you state, please, what that purports to depict? A. It shows the graph of the percentage of teachers with no Denver Public School experience in the junior high schools that have been selected for study for the years 1964 through '68.

Q. All right. Then, next, Doctor, is what has been [594] marked for identification as Exhibit 295. Would you describe, please, what it purports to be. A. It is a graph for the percentage of probationary teachers in those two groups of junior high schools for the years 1964 through 1968.

Q. Next is what has been marked for identification as Exhibit 296. What does 296 depict? A. Shows the percentage teachers in the two groups of schools, Anglo and minority schools, those teachers with ten or more years' DPS experience.

Q. Finally, Doctor, Exhibit 297 depicts what? A. It shows the median years of teacher experience for the two groups of selected junior high schools for 1964 through '68.

Mr. Greiner: Your Honor, we offer Exhibits 294 through 297 at this time.

Mr. Ris: Same objections as to Exhibits 290 through 293.

Mr. Brega: Same objections.

The Court: The objections will be overruled. They will be received in evidence. This is 294—

Mr. Greiner: Through 297.

The Court: They will be received.

(Whereupon, Plaintiffs' Exhibits 294 through 297 were received in evidence.)

[595] Q. Calling your attention, first, to Exhibit 294, which depicts teachers with no previous DPS experience, in the year 1964, what was the percentage of such teachers in selected minority schools? A. Approximately 18 percent.

Q. And what was the percentage in the selected Anglo schools? A. Approximately 15 percent.

Q. By 1968, Doctor, what was the percentage in the selected minority schools? A. Approximately 33 percent.

Q. And what was it in the selected Anglo schools? A. Approximately 15 percent.

Q. Approximately the same in the Anglo schools in 1968 as it was in 1964? A. No. Oh, in the Anglo schools, yes.

Q. And what was the comparison between '64 and '68 in the minority schools? A. Minority schools, 18 percent in 1964, compared to about 33 percent in 1968.

Q. So, it increased? A. It increased.

Q. Next, Doctor, Exhibit 295, with respect to probationary teachers in the selected junior high schools, minority junior high schools, in the year 1964?

[596] The Court: What's this subject matter?

Mr. Greiner: This one is probationary teachers, Your Honor.

A. 1964, for the minority schools, percentage is approximately 48 percent.

Q. And what was the comparable percentage in 1964 in the selected Anglo junior high schools? A. About 36 or 37 percent.

Q. Now, by 1968, Doctor, what was the percentage of teachers in the selected minority schools who were probationary teachers? A. About 62 percent.

Q. And what was the percentage that year in the selected Anglo schools? A. Approximately 33 percent.

Q. Next, Doctor, calling your attention to Exhibit 296, depicting teachers with ten or more years' DPS experience in 1964, what percentage of the teachers in the selected Anglo schools had ten or more years' DPS experience? A. About 31 percent.

Q. And what was the comparable percentage that year in the selected minority schools? A. About 12 percent.

Q. Calling your attention to the year 1968, in the year 1968 what percentage of the teachers in the selected [597] Anglo schools had ten or more years' experience? A. About 35 percent.

Q. And what was the comparable percentage in the selected minority schools? A. Ten percent.

Q. Finally, Doctor, with respect to Exhibit 297, which depicts median years of teacher experience in selected junior high schools, in the year 1964, what was the median years' experience in the selected Anglo schools? A. Approximately 4.6 years.

Q. And what was the median years' teacher experience in the minority schools that year? A. About 2.6 years.

Q. Now, by the year 1968, Doctor, what was the median years' teacher experience in the Anglo schools? What was the percentage? A. Not the percentage. Number of years.

Q. Pardon me, number of years. A. 5.6 years in the case of the Anglo schools.

Q. What was it for the selected minority schools? A. About 1.7.

The Court: I think we will take our morning recess now.

(The Court recessed from 10:58 o'clock a.m. until 11:10 o'clock a.m.)

[598] (Following a recess, the trial resumed at 11:17 a.m.)

Mr. Greiner: May plaintiffs proceed, Your Honor.

The Court: Yes.

By Mr. Greiner:

Q. Dr. Bardwell, have you also prepared a series of exhibits pertaining to the ethnic distribution of faculty in the selected senior high schools? A. We have.

Q. Handing you what's been marked for identification as Exhibits 314 through 317, I ask you if you can identify those, please? A. 314 is the distribution of faculty by ethnicity for the years 1964 through 1968 for the selected senior high schools.

Q. Which kind of senior high schools? A. East, Manual and West.

Q. Those are the minority senior high schools? A. Those are the minority senior high schools.

Exhibit 315 is exactly the same data expressed as a percentage.

Q. Then Exhibit 316? A. Exhibit 316 is the distribution of faculty by number for the selected Anglo senior high schools for the years 1964 through 1968.

Q. 317 depicts the same data as 316 except expressed [599] as a percentage, is that correct? A. That's correct.

Mr. Greiner: Your Honor, we offer 314 through 317 at this time.

Mr. Ris: Same objection as to 249 through 252 and 254 through 257.

Mr. Brega: Same objection.

The Court: The objections will be overruled. They will be received.

(Whereupon, Plaintiffs' Exhibits 314, 315, 316 and 317 were received in evidence.)

Q. Doctor, have you also prepared a chart depicting

the distribution of faculty in the selected senior high schools? A. Yes, sir.

Q. Handing you what's been marked for identification as Exhibit 318, I ask you to identify that? A. 318 shows a comparison of the Anglo schools selected for analysis and the minority schools selected for analysis on the basis of the percentage of minority school teachers for 1964 through 1968.

Q. And that is based on data that has just been received? A. That's correct.

[600] Mr. Greiner: Your Honor, we offer Exhibit 318.

Mr. Ris: Same objection as to 314 through 317.

Mr. Brega: Same objection.

The Court: Overruled.

(Whereupon, Plaintiffs' Exhibit 318 was received in evidence.)

Q. Dr. Bardwell, calling your attention then to Exhibit 318, in 1964 what was the percentage of minority school teachers in the selected minority senior high schools? A. About seven percent.

Q. And what was the percent of minority school teachers in the selected Anglo senior high schools? A. About two percent.

Q. Now, about 1968, Doctor, what was the percentage of minority school teachers in the selected minority schools? A. Twelve percent.

Q. Did it increase then from 1964? A. Yes, it increased from approximately seven to twelve percent.

Q. With respect to minority teachers in the selected

Anglo senior high schools, what was the percentage in 1968? A. About one and a half percent.

Q. It had decreased since 1964? A. It had.

Q. Next, Doctor, have you prepared a similar set of [601] exhibits depicting faculty experience at selected Anglo and minority senior high schools? A. We have.

Q. Handing you what's been identified as Exhibit 319 through 320, would you identify those for us, please? A. 319 shows the distribution of faculty by number at various experience categories for the selected minority senior high schools for the years 1964 through 1968.

Q. And 320 expresses the same data in terms of percentages? A. That's correct.

Q. And 321 expresses the same data in numbers for the selected Anglo schools? A. That's correct.

Q. And 322 expresses it as a percentage for the selected Anglo schools, is that correct? A. That's correct.

Mr. Greiner: Your Honor, we offer 319 through 322.

Mr. Ris: Same objection as to 249 through 252; 254 through 257.

Mr. Brega: Same objection.

The Court: Overruled.

(Whereupon, Plaintiffs' Exhibits 319, 320, 321 and 322 were received in evidence.)

Q. Doctor, similarly, have you prepared a series of [602] charts depicting the information as shown on 319 through 322? A. We have.

Q. Handing you what's been marked for identification as Exhibit 323 through 326, and I will ask you to identify each of those, please. A. Yes, Exhibit 323 is a percentage

analysis for the years 1964 through 1968, showing teachers with no Denver Public Schools experience for the selected senior high schools.

Q. And then the next one is 324. What does that show? A. That shows a similar analysis for probationary teachers.

And 325 shows a similar analysis for teachers with ten or more years of Denver Public Schools experience.

And Exhibit 326 shows a comparison of the median years of teacher experience for the two selected groups of senior high schools for the years 1964 through 1968.

Mr. Greiner: Your Honor, we offer Exhibits 323 through 326 at this time.

Mr. Ris: Same objection as to 319 through 322.

Mr. Brega: Same objection.

The Court: Overruled. They will be received.

(Whereupon, Plaintiffs' Exhibits 323, 324, 325, and 326 were received in evidence.)

[603] Q. Calling your attention first to Exhibit 323, Doctor, in 1964 with respect to teachers with no prior DPS experience, what was the percentage of such teachers in the selected minority senior high schools? A. About ten percent.

Q. What was it in the selected Anglo senior high schools? A. Slightly less than five percent.

Q. Now, by 1968, Doctor, what was the percentage of teachers with no prior DPS experience in the selected minority senior high schools?

The Court: What year is this?

Mr. Greiner: 1968.

A. About 16 to 17 percent.

Q. And what was the percentage of teachers with no prior experience in the selected Anglo schools? A. About seven and a half percent.

Q. Next, Doctor, with respect to Exhibit 324, and dealing with probationary teachers, in 1964 what was the percentage of probationary teachers in the selected minority senior high schools? A. About 30 percent.

Q. And what was it in the selected Anglo senior high schools in 1964? A. Approximately 16 percent.

[604] Q. And then by 1968, Doctor, according to Exhibit 324, what was the percentage of probationary teachers in the selected minority schools in 1968? A. About 35 percent.

Q. What was the percentage in the selected Anglo senior high schools? A. About 19 percent.

Q. Next, Doctor, Exhibit 325 dealing with teachers with ten or more years' experience, in 1964 what percentage of the teachers in the Anglo schools had ten or more years of DPS experience? A. About 46 percent.

Q. And what was the percentage of the selected minority senior high schools? A. About 41 percent.

Q. Now, about 1968, Doctor, in the selected Anglo senior high schools what was the percentage of teachers with ten or more years' DPS experience? A. About 51 percent.

Q. And what was the percentage in the minority schools? A. About 36 or 37 percent.

Q. So it had decreased somewhat in the minority schools? A. That's correct.

Q. Finally, Doctor, with regard to median years of experience in the selected senior high schools, in 1964 what

[605] was the median years' experience in the selected Anglo schools? A. Nine years.

Q. What was it in the selected minority schools in 1964? A. About seven years.

Q. Now, by 1968 what was the median years' experience in the Anglo schools? A. About ten years.

Q. And what was it by that time in 1968 in the minority schools? A. About six.

Q. So it had declined slightly? A. That's correct.

Q. Between 1964 and 1968, is that right? A. That's correct.

Q. Next, Doctor, have you prepared a series of exhibits purporting to show the building facilities at the selected elementary schools? A. We have.

Q. Handing you what's been marked for identification as Exhibits 268 and 269, can you identify those for us, please? A. 268 is a recapitulation of the state of the building facilities for the selected minority elementary [606] schools.

Q. What data is depicted on that exhibit? What are the columns? A. The first column indicates the date of original construction of the building. The second set of columns indicates the additions, construction dates of the additions. The next column indicates the capacity, the site size in acres, and the next column indicates the number of acres per hundred students.

The next one is the number of classrooms, the number of mobile units, library rooms, kindergarten rooms, the capacity of lunchrooms, physical education rooms, auditorium capacity, and whether or not that particular school had a swimming pool.

Q. Now, what does 269 depict? A. 269 depicts exactly the same information for the chosen 21 Anglo schools.

Mr. Greiner: Your Honor, we would offer Exhibits 268 and 269 at this time.

Mr. Ris: Subject only to our objection to 249 and 252, we have no other objections.

Mr. Brega: Same objection, Your Honor.

The Court: You don't presume that quality education is dependent upon physical facilities, I take it?

Mr. Ris: We will get into that later, but—

[607] The Court: I'm asking him.

Mr. Ris: I'm sorry. I thought you were asking me.

The Court: If you want to answer it, I'll hear you.

The Witness: Yes, that's correct.

The Court: You do presume that there is a relationship between physical facilities?

The Witness: We're simply presuming the information to show the differences between the two sets of schools in terms of their physical facilities, that's right.

The Court: I suppose the quality of the faculty, though, is really much more—a much more important element, isn't it?

The Witness: Am I entitled to answer that? I think you're right, sir.

The Court: Do you want to answer now?

Mr. Ris: No, I just want to make an observation here for the record, if I may. Ultimately we're going to object to this whole line of questioning pertaining to building for the same reason as we stated with respect to the teachers and basically for the same reason that the Court indicated or the basis

for the question to the witness, that this is a question pertaining to pupils and the racial and ethnic, and that the age of buildings and that type of [608] facilities are too remote.

So, frankly, I wasn't going to make any objection to the whole line of questioning inasmuch as the Court has permitted the matter to come in on the teachers, but we do ultimately contest all of this testimony for the same reason as stated on the teachers. That's our position.

(Whereupon, Plaintiffs' Exhibits 268 and 269 were received in evidence.)

[609] The Court: We will keep it in mind.

Mr. Greiner: I believe, Your Honor, that that would go to the weight of the evidence rather than to its admissibility.

Mr. Ris: I would agree in view of the Court's previous ruling it would.

The Court: We will receive them.

(Whereupon, Plaintiffs' Exhibits 268 and 269 were received in evidence.)

Q. Dr. Bardwell, have you prepared a chart which compares certain of the factors described in Exhibit 268 and 269? A. We have, yes.

Q. Exhibit 270 has been marked for identification, and this purports to depict what? A. It shows a comparison between the 20 minority schools and the 21 Anglo schools in terms of the acres per 100 students of the school sites for the year 1968.

Q. And then what has been marked for identification as Exhibit 271 purports to depict what, Doctor? A. It de-

picts the average age of the original structure for the two groups of schools selected for analysis.

Mr. Greiner: Your Honor, we would offer Exhibits 270 and 271 at this time.

Mr. Ris: In addition to our grounds of objection on 268 and 269, we submit that this is so remote, so irrelevant, [610] as not to be admissible at all with respect to the issues in this case.

The Court: Well, I can't tell at this stage. You are offering this to show that there is a classification, a recognized—or a classification, conscious or subconscious, even in terms of physical facilities; is that right?

Mr. Greiner: Yes, Your Honor, in terms of the disparity between the schools being compared.

The Court: All right, we will receive them then, 270 and 271.

(Whereupon, Plaintiffs' Exhibits 270 and 271 were received in evidence.)

Q. Doctor, with respect to Exhibit 270, what does it demonstrate with respect to the acres per 100 students, first of all, of the 20 minority schools? A. Twenty minority schools, the average number of acres per 100 students is slightly less than one-half.

Q. And what does it show for the compared 21 Anglo schools? A. About eight-tenths.

Q. Of an acre? A. Of an acre per hundred students.

Q. Exhibit 271 depicts what? A. This depicts the average age of original structure, comparing the 20 minority schools to the 21 Anglo schools.

[611] Q. What is the average age of the structure for the 20 minority schools? A. Approximately 50 years.

Q. And what is it for the selected 21 Anglo schools? A. Twenty-five years.

Q. Doctor, have you prepared a similar composite of the building facilities at the selected junior high schools? A. We have.

Q. That's Exhibit 298 and 299? A. Correct.

Q. Does it show the same data as the prior building facilities exhibits? A. They do.

Mr. Greiner: Your Honor, we would offer Exhibits 298 and 299, pertaining to the comparison of junior high school building facilities at this time.

The Court: This goes to the same—

Mr. Greiner: Same data, Your Honor.

The Court: —category?

Mr. Ris: Same objection as to 268 and 269.

Mr. Brega: Same objection.

The Court: Overruled. Received.

(Whereupon, Plaintiffs' Exhibits 298 and 299 were received in evidence.)

Q. Have you also prepared charts, Doctor, with respect [612] to the average number of acres and the age of original structure at the compared junior high schools? A. We have.

Q. Exhibit 300-A treats the average number of acres— A. Per hundred students, that's right.

Q. And what has been identified as Exhibit 300 depicts the average age of the original structures? A. That's right.

Mr. Greiner: Your Honor, we would offer Exhibits 300 and 300-A at this time.

Mr. Ris: Same objection as to Exhibits 270 and 271.

Mr. Brega: Same objection.

The Court: Overruled.

(Whereupon, Plaintiffs' Exhibits 300 and 300-A were received in evidence.)

Q. Doctor, with respect to Exhibit 300-A, what does it depict as to the average number of acres per 100 students in the selected minority schools? A. A little bit less than six-tenths of an acre per hundred students.

Q. What is shown on the exhibit with respect to the selected Anglo schools? A. Approximately .7 acres per hundred students.

Q. With regard to the average age of the original structures shown in Exhibit 300, what is the average age for [613] the selected minority junior high schools? A. Approximately 37 years.

Q. And what is it for the selected Anglo junior high schools? A. Approximately 10.

Q. Then, finally, Doctor, with respect to the senior high school building facilities, have you prepared a composite exhibit with respect to the selected minority and the selected Anglo senior high schools? A. We have.

Q. And what has been marked as Exhibit 327 depicts what? A. It shows the building facilities classified by various characteristics of the structure and site for the three selected minority senior high schools.

Q. And Exhibit 328 depicts the same data for the selected Anglo schools? A. That's right.

Mr. Greiner: Your Honor, we would offer Exhibits 327 and 328 at this time.

Mr. Ris: Same objection as to 268 and 269.

Mr. Brega: Same objection.

The Court: This is the swimming pool evidence?

The Witness: Excuse me, Your Honor?

The Court: This is the swimming pool evidence here?

The Witness: That's right.

[614] The Court: We will receive these.

(Whereupon, Plaintiffs' Exhibits 327 and 328 were received in evidence.)

Q. And, finally, Doctor, with regard to this computerized data, have you prepared charts based upon Exhibits 327 and 328 depicting certain of the aspects of facilities at these selected senior high schools? A. We have.

Q. And Exhibit 329 purports to depict what? A. It shows the average number of acres per hundred students for the minority schools compared to the Anglo schools that were selected for study.

Q. And Exhibit 330 depicts what? A. The average age of the original structure for the same two groups of schools.

Mr. Greiner: Your Honor, we would offer Exhibits 329 and 330 at this time.

Mr. Ris: Same objection as to 270 and 271.

Mr. Brega: Same objection.

The Court: Overruled; they will be received.

(Whereupon, Plaintiffs' Exhibits 329 and 330 were received in evidence.)

Q. Doctor, with respect to Exhibit 329, the average acres per 100 students, what is shown as to the average acres per 100 students for the minority schools selected? [615] A. For the minority schools it is approximately .07 acres per hundred students, and in the case of the Anglo schools it is about .15.

Q. All right, and then referring to Exhibit—

The Court: What's that last number you gave?

The Witness: .15.

Q. And what was it for the minority schools? A. .07.

Q. And with regard to Exhibit 330, the average age of the original structure shown for the minority schools is what? A. About 33 years.

Q. And for the selected Anglo schools? A. It is about seven years.

Q. Doctor, I am handing you what has been marked as Plaintiffs' Exhibit 240. Would you please identify that exhibit for us. A. Yes. Exhibit 240 shows the location of the 20 minority schools and the 21 Anglo elementary schools that have been selected for study in the preceding analyses.

Q. Those are the schools shown on Exhibit 241? A. Yes, the schools which are minority are shown in blue and the Anglo schools are shown in red.

Mr. Greiner: Your Honor, we offer Plaintiffs' Exhibit 240 at this time.

Mr. Ris: It accurately reflects 241?

[616] Mr. Greiner: Yes.

Mr. Ris: So our objection to this would be for the same reasons as 241. Other than that, we have no question as to its accuracy.

Mr. Brega: Same objection.

The Court: The objections are overruled.

(Whereupon, Plaintiffs' Exhibit 240 was received in evidence.)

Q. Next, Doctor, I am handing you what has been marked for identification as Plaintiffs' Exhibit 346. Can you identify Exhibit 346, please? A. Yes. Plaintiffs' Exhibit 346 compares the enrollment to the capacity for junior high schools for 1962 through '68, where the minority schools are the minority schools selected for study in the preceding analyses and the Anglo schools are Hill, Merrill and Jefferson. And it shows this comparison for the years '62 through '68.

Q. What is the basis—

Mr. Ris: Excuse me just a moment, could I see that?

The Court: What number are we on now? What number is that?

Mr. Greiner: No. 346.

Mr. Ris: If the Court please—excuse me, you haven't offered it yet.

Mr. Greiner: That's all right.

[617] Mr. Ris: Sorry.

Q. Doctor, what are the three Anglo junior high schools depicted on Exhibit 346? A. Hill, Merrill, and Thomas Jefferson.

Q. What is your basis for selecting those three junior high schools? A. Those schools had a constant capacity over the period 1962 through '68, and they are the same Anglo schools that were selected for the study among the Anglo junior high schools in the proceeding analysis.

Q. Now, 273 purports to depict the total capacity of Hill, Merrill and Thomas Jefferson? A. That's right.

Q. What is the source of the capacity data depicted on Exhibit 346?

Mr. Ris: I am going to object to that until the exhibit is admitted.

The Court: Overruled.

Mr. Greiner: I am laying a foundation for the exhibit.

The Court: Go ahead.

Q. What is the source of the capacity data? A. Exhibit 24.

The Court: Exhibit 24?

Mr. Greiner: Yes, which is in evidence, Your Honor, [618] from the summer hearing.

Q. What is the source of the enrollment data as depicted on Exhibit 346? A. The enrollment data are taken from the preceding exhibits that have been introduced here.

Q. With respect to what? A. With respect to enrollment.

Q. I am handing you what is in evidence as Exhibit 273, Doctor. Is that one of the sources you have reference to? A. Yes, that's correct.

Mr. Greiner: Your Honor, at this point we would offer Exhibit 346.

[619] Mr. Creighton: May I voir dire, Your Honor?

George E. Bardwell—for Plaintiffs—Voir Dire

Voir Dire Examination by Mr. Creighton:

Q. Dr. Bardwell, your capacity figures came from Exhibit 24, you said? A. That's right.

Q. And that is the August 1967 Planning Report for the bond issue that year? A. That's right, sir.

Q. Did that give capacities for any other area than that particular school year, 1966-67? A. Except that one can infer the information about the capacities from the year in which there were additions to the school, and not following 1968, no.

Q. Did you use such inferences in determining capacities for other years than 1966-67? A. Those figures are taken directly from Exhibit 24 which shows the capacity of the school building in the year 1967. It also shows the year in which there were additions to the plan, and these then would show that there had been for those schools since 1962 no changes in the capacity of the schools.

Q. Now as to membership, you used the principal's estimate of ethnic data; is that right? A. That's correct.

[620] Q. And you did not use the September principal's report used in all the school districts' capacity planning? A. That's correct.

Mr. Creighton: Your Honor, we have checked this with the capacity data and the inferences he has used and with the enrollment data from the source. It accurately reflects those sources of information. We do make an objection to the exhibit itself because it involves this classification of minority schools, again, the same objection we have been making.

Mr. Brega: The same objection.

The Court: May I see it, please?

Mr. Creighton: Your Honor, I have one further question of this witness.

The Court: Go ahead.

Q. Was a junior-senior high school involved in that exhibit, Dr. Bardwell? A. That's right.

Q. How did you get the membership of a junior-senior high school? A. Contacted the office of Mr. Crowley, who at that time supplied the enrollment for me in the years I needed it and in addition to that gave me the racial composition of those junior high schools.

Q. In other words you sought information breaking out [621] those three years of the junior high from that six-year school? A. Yes, because the usual report that comes out in September combines the junior and senior high school enrollment usually under the senior high school. So, one has to then have supplemental information in order to break out the junior high school component of the school.

Q. This is not then an instance where you arbitrarily divided the junior-senior high school in half to get your junior high membership? A. No, although I can add, that as a rule of thumb, from the school administration—and this was the advice that was given to me—that this is very close to the truth.

The Court: We will receive 346.

(Whereupon, Plaintiffs' Exhibit 346 was received in evidence.)

Direct Examination by Mr. Greiner (Cont'd):

Q. With reference, Dr. Bardwell, to 346, the thick, green line on the exhibit depicts what? A. It shows the combined capacity of—

Q. Pardon me. It depicts what? A. The capacities of those three-year schools, and those are the Anglo schools, Hills, Merrill and Jefferson, and—

Q. And the thin green line depicts what? [622] A. The enrollment of those three schools from the years 1962 through 1968.

Q. Now, with respect to the red lines, what does the thick red line depict? A. It shows capacity for the selected minority schools in the years 1962 through 1968.

Q. What does the thin red line depict? A. It shows the enrollment in those minority schools for the same period of time?

Q. Now, first of all, Doctor, directing your attention to the Anglo schools depicted on Exhibit 346, and first of all, the thick green line, does that indicate any increase in capacity at those three junior high schools over the time period depicted? A. No, it does not.

Q. Does it indicate an increase in the student enrollment at those three high schools? A. It does.

Q. What was the student enrollment, approximately, in 1962 as shown by Exhibit 346? A. Approximately 3,800.

Q. And by the year 1968, Doctor, what had that enrollment increased to? A. About 5,000.

Q. Now, drawing your attention to the minority schools, [623] Doctor, was there any change in the capacity of the minority schools over this time period? A. Very slight increase in 1966.

Q. Do you recall what that increase related to? A. The addition at Smiley.

Q. Now, with regard to the enrollment at these selected

minority schools, Doctor, what was the enrollment in 1962 as depicted by Exhibit 346? A. About 5,100.

Q. And what was the enrollment as of 1968 in these minority schools? A. Slightly less than 4,500.

Q. Now, again referring to Exhibit 346, Doctor, in each instance there is a gap, is there not, between the thick line and the thin line in each color? A. There is.

Q. What does that gap represent? First of all, with respect to the green line in the Anglo schools, what does—take the year 1964, for example. A. In 1964 the enrollment in those Anglo schools was about 4,500 compared to a capacity of about 4,000.

Q. So there was an over enrollment then of approximately 500 students? A. That's correct.

Q. Now, what was the situation at that point in time [624] at the minority junior high schools? A. In 1964 the enrollment in those minority schools was approximately 5,000 students, while the capacity was 5,500.

Q. Is there then a relationship depicted in Exhibit 346 between the undercapacity of the minority schools and the over-enrollment at the majority schools? A. Yes.

Q. What is that relationship? A. By and large the number of students exceeding the capacity in the Anglo schools was about the same as the number of seats available in the minority schools for those same years.

Q. Now, you have already given us the data as to 1964. Is the situation the same in 1966 as depicted by the exhibit? A. Yes, roughly.

Q. What was the overcapacity or the over-enrollment at the Anglo schools in 1966? A. About 1700.

Q. What was the degree or the number of undercapacity for the minority schools in that year? A. About 1,000.

Q. Pardon me? A. About 1,000.

Q. And in the year 1968, what was the over-enrollment at the Anglo schools? [625] A. About 1,000.

Q. And what was the under-enrollment at the minority schools? A. About 1,000.

Q. Doctor, do you know whether during the years 1962 through 1968 there were any new junior high schools built by the School District No. 1? A. Yes, there were.

Q. When was the first such school built? A. John F. Kennedy was built in 1966.

Q. Do you recall what the capacity was of Kennedy when it opened? A. About 2100, the combined junior high and senior high school. It would be about 1,050 for just the junior high.

Q. Then was there another junior high school opened in 1968? A. Yes.

Q. What was that? A. Hamilton.

Q. And do you recall what the capacity of Hamilton was? A. 1200.

Q. Now, is there another junior high school currently under construction or authorized? A. Yes.

Q. What is that? [626] A. Place.

Q. Do you recall what the capacity of Place will be? A. 1200.

Q. Do you recall when Place is scheduled to open? A. 1971.

Q. Doctor, you have on the podium in front of you what is in evidence as Defendants' Exhibit D, which we have been referring to as the Gilberts Plan. A. Yes.

Q. The Gilberts plan was published in what year, Doctor? A. 1968.

Q. Is there a projection shown in the Gilberts plan as to their expectancy as to what's going to happen to junior high school enrollment? A. Yes.

Q. Would you tell us, please, what page in Exhibit D you're referring to. A. A written presentation appears on page 13, and graphs showing the membership trends and

estimated trends through the year 1970 are shown on the page following page 13.

Q. Now, with respect first to the graphs which you have just described, what does the graph show as to the projected junior high school enrollment, Doctor? A. That it will remain fairly level for the next several years at approximately 21,000.

[627] Q. And 21,000 was the level as of what school year? A. As of 1966, approximately.

Q. And how far into the future does that projection extend? A. 1970.

Q. Now, is there any narrative on the preceding page describing their estimate of projection? A. There is.

Q. Would you read that, please. A. "School District No. 1, Denver Public Schools, with a pupil membership in 1968 of 96,848 pupils, is coterminous with the City and County boundaries. Enrollment in the schools grew rapidly. 7.4 percent per year during the 1950 to 1960 decade. Less rapidly during the period 1960 to 1965, and now is remaining about constant. Estimates point to a stabilized school membership for the next several years. However, Denver has room to grow, and its school population should continue to increase at a gradual rate. For a number of years the school population in Denver has increased annually at each school level until recently when the citywide elementary membership began to stabilize, secondary school memberships appear to be leveling off since increases in these years are small."

Membership trends are shown in the accompanying graph which I have just related.

[628] Q. Doctor, do we have any other evidence of what in fact has been happening to enrollment at the junior high school level? A. Yes, we do.

Q. Handing you what's in evidence as Exhibit 274, what does Exhibit 274 show with respect to the total junior high

school enrollment? A. That from 1967 to 1968 there was a decrease of approximately 100 students in total enrollment for all junior high schools in the district.

Q. Doctor, I am also handing you what has been marked for identification as Defendants' Exhibit S-1. Can you identify that for us? A. Yes. This is the report of the estimated ethnic distribution of pupils, classroom teachers, and other certified and classified personnel for September 26, 1969.

Q. That is then for the current school year? A. For the current school year.

Q. And these are the School District figures? A. That's correct.

Mr. Greiner: Your Honor, we offer Defendants' Exhibit S-1 at this time.

Mr. Creighton: Your Honor, this might be termed a joint exhibit. It is the update of Exhibit S from the last summers' hearing, giving this fall's ethnic estimates. No [629] objection.

Mr. Brega: No objection.

The Court: It is received.

(Whereupon, Defendants' Exhibit S-1 was received in evidence.)

Q. Referring to S-1 then, Doctor, what has happened to the junior high school enrollment this school year compared to the prior school year? A. In 1969, for this school year, that enrollment is 19,736.

Q. What was it in the prior school year according to Exhibit 274? A. It was 21,599. There has to be then an addition to that of the contribution of John F. Kennedy and Thomas Jefferson.

Q. We're talking now about enrollment? A. That right.

Q. What happened to the enrollment to the junior high

schools between this school year and last school year? A. It appears to have decreased.

Q. By about how much? A. A few hundred students.

Q. Now, with respect to the elementary school enrollment, Doctor, which will eventually be feeding into these junior high schools, I am handing you what is in evidence as [630] Exhibit 243. What does 243 show with respect to the total elementary school enrollments in the District? A. 243 shows that the elementary school enrollment in Denver has been declining every year since 1963.

Q. What was it, for example, in 1963? A. In 1963 the elementary enrollment was 57,199.

Q. What was it in 1968? A. 54,586.

Q. Referring to S-1, what is it this year? A. This year it is 54,498, or a drop of about 100 students.

Q. Next I am handing you, Doctor, what has been marked for identification as Plaintiffs' Exhibit 247. Can you identify that for us, please. A. Yes. That is a depiction of the enrollment versus the capacity for all junior high schools in the District from 1962 to 1971.

Q. What is the source of the enrollment and capacity data on Exhibit 347? A. The enrollment—the capacity information came from the same source as the preceding exhibit, namely, Exhibit 24, and the enrollment information came from previous exhibits that have been submitted here.

Mr. Ris: No objection.

[631] Mr. Brega: No objection.

The Court: 347 is received.

(Whereupon, Plaintiffs' Exhibit 347 was received in evidence.)

Q. Doctor, calling your attention to Exhibit 347, first of all, the thick green line on that exhibit depicts what? A. Capacity.

Q. Now, in 1968 you show the overall capacity of the junior high schools increasing; is that correct? A. That's correct.

Q. And what accounts for that increasing? A. The building of John F. Kennedy in 1966.

Q. Pardon me. I misspoke. It's the year 1966? A. Yes.

Q. And then you show another increase in capacity in the year 1969; is that correct? A. That's correct.

Q. What does that depict or reflect? A. That reflects an increase in capacity of junior high schools coming from the building of Hamilton.

Q. And then finally in 1970 you have projected another increase in capacity in the junior high schools. That reflects the opening of Place; is that correct? A. That's correct.

Q. Now, the thin green line on Exhibit 347 depicts [632] what? A. Shows the enrollment in all junior high schools in the District in 1962 to 1968.

Q. Now, in 1966, Doctor, is there a gap between the the thin green line and the thick green line? A. There is.

Q. Does that gap denote overcapacity or undercapacity at that point in time? A. Undercapacity.

Q. By approximately how many spaces? A. I would say about 500.

Q. So in 1966 there were 500 seats not utilized in the junior high schools? A. That's right.

Q. What was the situation in 1968 with regard to enrollment versus capacity? A. A slight increase in the gap. The capacity exceeding the enrollment by this time by about 600 students, I would judge.

Q. Now, Doctor, if we were to extend the thin green line based on the data which we have now contained in S-1 as to the actual 1969-70 enrollment, would there also be an excess of capacity for this chool year? A. There would.

Q. And yet, Hamilton was also opened during that time period; is that correct? [633] That's correct.

Q. So the capacity was increased even further? A. That's right.

Q. And so the underutilization was increased even more; is that correct? A. That's correct.

[634] The Court: When did the trend reverse? In '66?

The Witness: About '66, when the enrollment started to turn down.

The Court: They probably had all these new schools in the planning or development stage, land acquired and so at that point?

The Witness: Well, except for Hamilton, which I would say was built in '68. Its planning must have come at a time when the projection of enrollments was pretty clear at that point.

The Court: But, up until '66, there was an upward trend?

The Witness: That's right.

The Court: And apparent need for additional capacity?

The Witness: That's correct.

Q. Was that true, Doctor, when they were planning Place? A. No, sir.

Mr. Ris: I am going to move to strike that. He hasn't testified as to when they were planning Place.

Q. When were they planning Place?

Mr. Ris: If you know?

The Court: Do you know?

The Witness: As to when they planned the space?

[635] Mr. Greiner: Place.

Mr. Ris: Place.

The Court: Place Junior High School.

A. I am not certain.

Q. So, the enrollment started dropping off in 1966? A. Yes, it did.

Q. Do you know whether they were planning Place in the year 1966? A. I can't—

Mr. Brega: I believe he already said he didn't know, and that would answer the question.

The Court: True.

Mr. Greiner: All right. We will find out from the other witness, Your Honor.

The Court: All right.

Q. Dr. Bardwell, I have placed here on the board Exhibit 390, purporting to show elementary schools undercapacity by more than ten percent in the year 1968. Was this exhibit prepared by you? A. Yes, it was.

Q. And what is the source of the data depicted on Exhibit 390? A. The exhibit showing pupil enrollment. In fact, Exhibit 243.

Q. Now, what do the blue circles—

[636] The Court: 243?

The Witness: 243, yes.

Q. What do the blue circles purport to depict on Exhibit 390? A. The blue circles show those schools that have a predominantly minority enrollment that are undercapacity by more than ten percent.

Q. And then what do the red circles purport to depict? A. The red circles are—show the locations of those schools which are predominantly Anglo in 1968, but were undercapacity by more than ten percent.

Mr. Greiner: Your Honor, we offer Plaintiffs' Exhibit 390.

Mr. Ris: May I ask what your criteria for determining minority or Anglo for this purpose?

The Witness: Yes, simply the racial composition of that school in 1968 according to the principal's reports, whether or not that enrollment was greater than 50-percent Anglo or not.

Mr. Ris: Well, now, your previous definition was that it was Anglo at the elementary level if it was over 90-percent, wasn't it?

The Witness: Our definition here for this purpose was to indicate—I am not talking about segregated schools. I am simply talking about the predominant ethnic characteristic [637] of that school in 1968. It has nothing to do at all with probability analysis.

Mr. Ris: Well, we have been discussing all the rest of the morning Anglo-minority by these percentages you previously testified to. You are abandoning those percentages on this exhibit and this is solely on the basis of 50-percent Anglo?

A. That's correct, just a predominantly Anglo or minority school.

Mr. Ris: All right. So we have that understood. Also, you are lumping Hispano, Negro, orientals or any other ethnic group in the non-Anglo?

The Witness: As minority.

Mr. Ris: For this purpose?

The Witness: That is correct.

The Court: You don't have any objection? It has been offered, I take it?

Mr. Greiner: Yes, Your Honor, it has.

Mr. Ris: So far as we know, it is accurate.

Mr. Brega: No objection.

The Court: It will be received, Exhibit 390.

(Whereupon, Plaintiffs' Exhibit 390 was received in evidence.)

Q. Next, Doctor, I will call your attention to the first overlay, which has been designated as Exhibit 390-A, [638] and ask you what 390-A purports to compare? A. It shows the transportation pattern for the elementary schools between various areas of the school district and the individual receiving schools for 1968.

Q. Doctor, what is the source of your transportation data? A. The transportation data was obtained from the principals' reports to the transportation department in 1968.

Q. And the red lines depict what? A. Simply show that a certain number of students were transported from one area of the city to a particular school.

Q. Pardon me, Doctor. The red lines, do they have anything to do with numbers? A. They have nothing to do with numbers. They just simply show that—show the existence of certain students being transported between various geographical areas of the city.

Mr. Greiner: All right, Your Honor, we offer 390-A.

The Witness: I might add—

Mr. Greiner: Just a moment, Doctor.

The Witness: All right.

Mr. Ris: May I ask a couple of questions?

[639] *Voir Dire Examination by Mr. Ris:*

Q. Mr. Bardwell, I have got a document that is not an exhibit and it purports to be a transportation report for a five-year period, and I believe this was made available to you under discovery, was it not? A. You mean this? Q. Yes. A. Yes.

Q. And in this is a chart, membership report of pupils from other subdistricts or outlying areas? A. Yes.

Q. Is this chart the basis for that overlay? A. That is, yes.

Mr. Ris: Frankly, we haven't had an opportunity to check against the chart, but for present purposes we don't know that it is not accurate, so I can't object on that ground. We can probably check it over the noon hour, so I presume it can be admitted at this point, and if we find anything wrong with it over the noon hour I will take it up in cross-examination.

The Court: All right.

Mr. Brega: I object. It is not material. The transportation has not been set forth for any particular reason and the particular schools don't show anything except [640] a generalization by this witness.

The Court: This is designed to show the extent to which there is transportation furnished?

Mr. Greiner: That's correct, Your Honor, and also to depict the sending and receiving areas of that transportation, and the combination of 390 and 390A—my next series of questions will simply bring out the fact that there are students being transported past schools which are undercapacity to schools further distant.

The Court: That's the purpose of this, then?

Mr. Greiner: Yes, Your Honor.

The Court: Overruled, it will be received.

(Whereupon, Plaintiffs' Exhibit 390-A was received in evidence.)

Direct Examination by Mr. Greiner (Continued):

Q. Now, Dr. Bardwell, you said that the blue circles on Exhibit 390 depicted what? A. Those were the—those are the schools that have more than a 50-percent minority enrollment and are undercapacity by more than ten percent.

Q. And the red circles are the Anglo schools which have more than ten percent overcapacity? A. Undercapacity.

Q. So that all schools shown—

[641] The Court: Are you maintaining here that the transportation is used to maintain segregation, that transportation is employed in order to avoid integration?

Mr. Greiner: The latter, yes, Your Honor, that certain students are bused past schools with space in them to schools further distant.

The Court: The inference you draw is that it would be more feasible to drop them off?

Mr. Greiner: At the closest school.

Mr. Brega: If the Court please, we are doing that under the preliminary injunction.

Mr. Greiner: This is 1968, of course. This is prior to the preliminary injunction.

Mr. Ris: Is the direction of travel indicated there at all?

Q. Can you answer that, Doctor? A. Yes, one can infer that because the receiving points of any one of those lines must wind up at a school, so that would be the terminal point of that transportation route.

Q. There is no arrow as such on each line? A. There is no arrow.

Q. Doctor, could you leave your stand there for a moment and go over to the exhibit?

For example, Doctor, with respect to Moore Elementary [642] School, do you find that? A. Yes, Moore Elementary School.

Q. Now, the red dot indicates— A. It is predominantly Anglo, using the criterion of 50 percent, and that it is more than ten percent undercapacity.

Q. Are there some students from Northeast Denver depicted there being bused into Moore? A. Yes, this is Smith Elementary School and these students shown by this somewhat spider web set of lines emanating from Smith show the students, groups of students, that are being transported out of Smith to various schools in the area.

Q. Now, does the red circle, Doctor, show the underutilization of Moore before or after the busing shown from Smith? A. After.

Q. So, there is some busing from Smith, and yet there is still some capacity at Moore, is that correct? A. That's correct.

Q. Now, is there yet more busing from Smith depicted on Exhibit 390-A? A. There is.

Q. Does some of that transportation go right past Moore Elementary School? A. That's right.

[643] Q. To what schools? A. Here would be a case in which this longer line from here to here represents the transportation from Smith to Doull. This transportation, for example, from here to here, shows the transportation from Smith to McKinley.

Q. For example, the transportation from Smith to McKinley, that goes right past another underutilized Anglo school, is that correct? A. That's correct.

Q. What is that school? A. It happens to be Steele.

Q. All right, and there is transportation down to Asbury School, depicted by a line? A. That's correct.

Q. Does that transportation also go past underutilized Anglo schools? A. That's correct.

Q. I think you can resume your seat, Doctor.

Now, Doctor, did the data which you studied, which was the basis for 390-A, did it also depict the numbers of students being transported? A. Yes, it does.

Q. And have you created an exhibit which purports to geographically show the numbers of students being transported on a scale? [644] A. Yes.

Q. And is that Exhibit 390-B? A. Yes.

Q. And what then is the source of the information depicted in 390-B? A. The same source, the principals' reports on transportation to the transportation department.

Q. Now, the yellow lines on 390-B depict what? A. The yellow lines show the transportation of students from minority schools to various parts of the district, and the green lines show the transportation of students from predominantly Anglo areas of the city to the receiving schools.

Q. I note, Doctor, there are differences in the thicknesses of the lines on Exhibit 390-B, is that correct? A. Yes.

Q. What does a thin—is there supposedly represented there some comparison in terms of numbers? A. Yes, the thinner the line, the smaller the number of students in a group going to a receiving point, and the thickness of the line indicates the extent of the number of students in roughly a linear fashion so that, if we take a particular yellow line, one of the very thin ones, as representing, let's say, 50 students, then by comparing that to another line whose thickness is twice as large, then [645] that would indicate the transportation of 100 students.

Mr. Greiner: Your Honor, we offer 390-B at this time.

The Court: Is this as of the year 1968?

The Witness: Yes, that's right.

Mr. Ris: I don't know how it can be checked. We have no objection to it as of now.

Mr. Brega: We make the same objection as to 390-B, Your Honor.

The Court: 390-B will be received.

(Whereupon, Plaintiffs' Exhibit 390-B was received in evidence.)

Q. Doctor, I call your attention to the yellow lines which emanate from Northeast Denver, and you testified that those yellow lines depict what? A. Those yellow lines indicate the transportation of minority students to various parts of the city.

Q. Now, there is a large, thick yellow line up here in the northeast quadrant of Exhibit 390-B. A. Yes, sir.

Q. And that depicts transportation into what school? A. Garden Place.

Q. Now, the green lines down here in the southeast quadrant of Exhibit 390-B depict what? Transportation of Anglos? [646] A. Yes.

Q. From one Anglo school to another? A. No, from areas of the city into Anglo schools that are receiving school. Generally, these are from annexed areas that do not have at the present time a school.

Q. Does some of the transportation indicated in green also reflect the transportation of Anglos from overcrowded Anglo schools? A. That's correct.

Q. Now, looking at Exhibit 390-B, Doctor, are the numbers of minority students being transported, say, the batch size of the minority students being transported, comparable in any manner to the batch size of the Anglo students being transported?

Mr. Ris: I am sorry, what size?

Mr. Greiner: Batch.

Mr. Ris: B-a-t-c-h?

Mr. Greiner: Yes.

Mr. Ris: I don't know what that means.

Mr. Greiner: Just the size of the group being transported.

A. In the case of the minorities' so-called batch, as you call it, it is considerably smaller than the batch for Anglo students.

Q. We don't know from Exhibit 390-B how many buses [647] are involved in any one of those lines? A. No, we do not.

Q. So there may be a single bus that transports a group of students to several schools, is that correct? A. It could be, yes.

Q. But the thickness of the line does depict the number of students that are actually received in the receiving school, is that correct? A. That's correct. I might add in anwser to your previous question—

Mr. Brega: Just a moment. Now, you have answered the question. If he wants more, he will ask it.

The Witness: All right.

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[648] * * *

Q. Dr. Bardwell, before leaving Exhibit 390-B, does Exhibit 390-B show the average number of students per group in this busing? A. Yes, it does.

Q. And can you read the exhibit from where you're sitting? A. Yes, I can.

Q. For the minority students, Doctor, what was the average number of students in the minority student group? A. Twenty-nine.

Q. And what was it for the Anglo students being bused? A. Sixty-seven.

Q. Now, that 29 figure as to minority students—

The Court: What kind of grouping is this?

Q. How did you compute that, Doctor? A. If one determines a total number of students that were in a bused group, add all of those up and then divides by the number of groups involved, then this would be equivalent to saying on the average there are about 30 minority students as a group that are being bused from one location to another.

Mr. Ris: May I ask—is that the same as a batch?

[649] The Witness: A batch. All right.

Q. Dr. Bardwell, is there a large group of minority students being—or students at least being bused into Garden Place? A. Yes.

Q. Do you know whether or not those are in fact minority students? A. Most of them are minority students.

Q. Where do they come from? A. They are coming from the Stapleton project north of the city and are being bused into Garden Place.

Q. And that's a housing project up here? A. Yes, it is.

Q. Is that group of 500 minority students included in this 29-per-group average? A. They are.

Q. And if you took those 500 out, what would the group average be? A. The average batch size this time would be dropped to a figure very close to ten.

Q. All right now. Does Exhibit 390-B also show the total number of minority students being transported in 1968? A. Yes.

Q. And what is that figure? A. 1,184.

[650] Q. And have you computed the percent of the total minority population therefore being bused in 1968? A. Yes, approximately 6 percent.

Q. And then with regard to Anglos being bused in 1968, Doctor, what is the total number of Anglo students being bused? A. 4,369.

Q. Now, have you computed a percentage or a proportion of the total number of Anglo students who are riding buses? A. Yes.

Q. What is that? A. 13 percent.

The Court: The percentage of Negroes being bused—this is minority or just Negroes?

The Witness: The minority would include the—

The Court: The Hispanos?

The Witness: —the Hispanos as well.

The Court: What is that percentage?

The Witness: The percentage was 6 percent. Six percent and 13 percent.

The Court: You say they were moving them from Stapleton to Garden Place?

Mr. Greiner: The Stapleton housing project.

The Court: Oh.

Q. Dr. Bardwell, have we been furnished with racial [651] and ethnic data for the school year 1961-1962, first of all? A. Yes, we have.

Q. And is that data reflected in Exhibit 398? A. It is.

Q. And then we have also been supplied by the defendants with racial and ethnic data for the 1962-1963 school years? A. We have.

Q. Is that depicted in Exhibit 399? A. It is.

Mr. Greiner: Your Honor, we would offer 398 and 399 at this time.

[652] Mr. Ris: No objection.

Mr. Brega: No objection.

The Court: Very well, 398 and 399 are received.

(Whereupon, Plaintiffs' Exhibits 398 and 399 were received in evidence.)

Q. Dr. Bardwell, I would like to next call your attention to a question of the dropout data concerning the minority schools, and handing you what has been marked for identification as Exhibit 400 and Exhibit 400-A, can you identify first for us Exhibit 400-A? A. Exhibit 400-A is an explanation of definitions and calculations for dropout studies which are conducted by the Colorado State Department of Education.

Q. And by whom is 400-A published? A. By the Colorado State Department of Education, Division of Guidance Services.

Q. Would you identify Exhibit 400, please. A. 400 is a summarization of the dropout information for September 1968 for Denver's junior high schools and Denver's high schools, published by the Colorado Department of Education.

Mr. Greiner: Your Honor, at this time we would like to offer Exhibits 400 and 400-A.

Mr. Ris: If the Court please, with respect to 400 and 400-A, we admit the authenticity, that these are documents [653] from the Colorado Department of Education.

As to the accuracy, there has been no foundation laid as to the accuracy of any of the columns of figures that are on here, and for that reason we object to Exhibit 400.

Mr. Brega: Your Honor, we make the further objection that the information contained in the exhibits is not shown to be material or probative in this issue.

Mr. Griener: Your Honor, if I might comment on the objections, first of all, Exhibits 400 and 400-A have been given to the defendants quite some time ago. I thought that they were going to check the accuracy of the figures, but they apparently have not.

Secondly, as to the probative value of the exhibits, the dropout data is offered to show two things: One, the extremely high dropout rate which obtains in the minority junior and senior high schools, approaching at sometimes rates of some 80 or in excess of 80 percent, and, secondly, to compare those dropout rates, Your Honor, in the minority schools with the dropout rates, which are much lower, which pertain in the predominantly Anglo schools.

In our view, it is simply another indicia of the educational opportunities which are afforded by the minority schools.

The Court: Does this 400-A contain any comments about the matter you mentioned?

[654] Mr. Greiner: It is strictly explanatory as to how the State—what formulas the State uses in computing the figures which are reflected in Exhibit 400. There is no editorial comment.

Mr. Brega: May I ask if these two exhibits are taken out of the descriptive report by the State?

The Court: Have you seen them?

Mr. Brega: Yes, but I can't tell—

The Court: This is a narrative type report, or this is a columnar type of report containing figures and information.

Mr. Brega: Well, have these been taken out of the annual Colorado report filed?

The Witness: Both of these are given as separate documents by the Colorado State Department of Education for anyone who wishes them.

Mr. Brega: The record should also reflect that I have never had a copy of those shown to me before. We further object.

Mr. Ris: I also direct the Court's attention to the fact Exhibit 400-A is dated 1963 and Exhibit 400 is dated 1968, and there is nothing to tie them together.

Q. Are the formulas in 400-A still used today? A. Yes.

Mr. Brega: I will object to that. That calls for [655] hearsay.

The Court: What's the source of your information on that?

The Witness: Those two pieces of information were gotten from the technical people at the Colorado State Department of Education, and the definitions

and calculations used in computing the dropout rates for all the schools in the State, that document relating to how they calculate the dropout rates, the definitions of the dropout rates, have been in existence since 1963, and the document is still distributed on that basis as their current method for calculations.

The Court: Very well, the objections will be overruled and 400 and 400-A are received for whatever value they might have. I confess that their materiality is somewhat limited, as I see it.

(Whereupon, Plaintiffs' Exhibits 400 and 400-A were received in evidence.)

Q. Directing your attention first to Exhibit 400-A, does 400-A describe the formula for calculating both a projected dropout rate and an annual dropout rate? A. Yes, it does.

Q. Now, referring your attention to Exhibit 400, does that exhibit also reflect calculations of an annual dropout rate and a projected dropout rate? A. It does.

[656] Q. Doctor, what is a projected dropout rate? A. Projected dropout rate is designed to answer the question, as an example, what percentage of our seventh graders would drop out before completing high school if the holding power conditions that exist that year continued?

Q. Is the projected rate then a cumulative rate? A. It is.

Q. What about the annual rate? A. Annual rate is simply based upon the dropout data for that particular year.

Q. Referring then, Doctor, to Exhibit 400, what is the projected dropout rate for Cole Junior High School in 1965? A. 12.6 percent.

Q. And what senior high school does Cole feed into, do you know? A. Manual.

Q. And what is the projected dropout rate for Manual in 1965? A. 64.8.

[657] Q. Now, Doctor, using those two dropout rates, can you advise us as to what—out of a hypothetical 100 students entering the seventh grade at Cole, how many of them might be expected to graduate from Manual?

Mr. Brega: Your Honor, I would like to make a further objection on that and that even assuming the validity of the exhibit we don't believe this is anything more than speculation.

The Court: Well, I have indicated that, but I think their relevancy is quite limited because there are many other factors that can explain dropouts, I mean, obvious ones, other than the quality of the school or, as you say, its power to hold the student individually. But, I am going to take the evidence anyway. It may shape up.

A. If you take a hypothetical 100 students beginning Cole Junior High in the seventh grade, at the end of that junior high school experience these dropout data would say that there would be approximately 87.4 of those children that would graduate so to speak from Cole. Then, upon entering Manual those that are left, 87.4, we would expect 64.8 percent of those 87 students to stop out before completing Manual. The net effect of this would be that of the 100 students beginning Cole in the seventh grade, we would find that but 31 percent or 31 of those students would be graduated from Manual.

[658] Q. Now, Doctor, does Exhibit 400 also depict the

dropout rates at Anglo schools as well as minority schools? A. It does.

Q. Doctor, I am handing you what's been marked for identification as Plaintiffs' Exhibit, first of all, 219, which purports to be a boundary map. Can you identify it for us, please? A. Yes, this is a map showing the boundaries in 1961 for Cole, Morey, Baker, Byers, Gove, and part of Hill Junior High Schools, together with the option zones of attendance.

Mr. Greiner: Your Honor, the authenticity of Exhibit 219 has been stipulated to. We will offer it in evidence at this time.

Mr. Ris: No objection to 219.

Mr. Brega: No objection.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 219 was received in evidence.)

Q. Doctor, you mentioned the optional areas. Could you describe them, please, and—as they are depicted on 219? A. Yes. On the north there is an optional area between Morey and Cole, roughly bounded by 17th Avenue and 22nd Avenue, and between York and the downtown area. On the west there is an optional area between Baker and Morey bounded roughly by Broadway and, oh, Clay Street. On the south there [659] are two optional areas, one between Morey and Byers; another between Morey and Hill; and on the extreme east there is an area that is an optional area between Gove and Morey. This depicts then the attendance areas for these schools around Morey in 1961.

Q. Doctor, have you computed the capacity of the junior high schools, Morey, Byers and Cole? A. Yes.

Q. I hand you what's been marked for identification as Exhibit 224 and ask you if you can identify that. A. 224 is a chart showing the capacity utilization in 1961 and 1962 for Morey, Cole and Byers.

Q. And what is the source of the data reflected on Exhibit 224? A. In the case of capacity for each of these schools, that has been taken from Exhibit 24. With regard to the enrollment in 1962 for Morey, Cole and Byers, this was taken from Exhibit 20. For 1961 the enrollment for these same three junior high schools was taken from another exhibit that has just been introduced.

Q. And that was either 397 or 398? A. That's correct.

Mr. Greiner: Your Honor, we would offer Plaintiffs' Exhibit 224 at this time.

Mr. Ris: No objection.

[660] Mr. Brega: No objection.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 224 was received in evidence.)

Q. Dr. Bardwell, in 1961 what does Exhibit 224 show the capacity to have been at Morey Junior High School? A. At Morey, 1200.

Q. And what was the capacity at Byers that year? A. 1200.

Q. And what was the capacity at Cole that year? A. 1,725.

Q. Now, in 1962, Doctor, were there boundary changes proposed with respect to these three junior high schools? A. Yes, there were.

Q. Have you prepared an overlay exhibit which reflected the boundary changes which were ultimately adopted? A. Yes.

Q. And what is your source of that information? A. The source of this information is again Exhibit 20.

Mr. Greiner: Your Honor, at this time the plaintiffs would offer Plaintiffs' Exhibit 220, being the overlay showing the proposed boundary changes.

Mr. Ris: No objection.

Mr. Brega: No objection.

The Court: Very well. It will be received.

[661] (Whereupon, Plaintiffs' Exhibit 220 was received in evidence.)

Q. Doctor, would you describe for the Court, please, the boundary changes proposed, which are depicted on Exhibit 220? A. Considering first the northern area on the north of Morey, the optional area that was there before, it was proposed to assign the students from there to Morey. In addition to that, on the north of that optional zone, having the width of about four blocks, that area was also proposed to be assigned to Morey, the optional area on the west.

The Court: This north was the—an optional area with Cole?

The Witness: Yes.

The Court: And on the west it was—

The Witness: On the north of that optional area was an area that had previously been assigned to Cole. And that's roughly between 22nd Avenue and 26th Avenue.

Q. That is the area immediately north of the northern cross-hatched area? A. That's correct; on the west the

area that was formerly optional between Baker and Morey, the proposal was to assign that directly to Morey.

Mr. Ris: Just a moment. Could we straighten that out, please, Mr. Bardwell. I think you said that extended [662] from Broadway to Clay Street. It is actually from Broadway to Elati; is it not?

The Witness: Well, it's a rough boundary.

Mr. Ris: Well, Clay Street is clear on the other side of the river.

The Witness: Excuse me. It is Elati.

A. The southern portion, the optional area between Morey and Byers, the proposal was to assign that optional area entirely to Byers. In addition, the area that was optional between Morey and Hill, except for a small pocket on the east, it was proposed to assign that to Byers. In addition to that, a two-block strip between 6th Avenue and 8th Avenue from approximately Race Street to Broadway, the proposal was to assign that to Byers. That area had formerly been in Morey. Then, there was a small area just east of Cheeseman Park, which contained about eight blocks, which was formerly Morey. The proposal was to assign that also to Byers.

Q. Now, Doctor, have you also prepared an overlay reflecting the census data as to the racial composition of the areas which were assigned, first, from Cole to Morey, and then the areas which were assigned from Morey to Byers? A. Yes, we have.

Q. And what is the number of that exhibit? A. The number of this exhibit is 220.

Q. Now, what is the basis for the racial information [663] contained on that exhibit? A. These data were taken from the enumeration statistics of the census in 1960.

Mr. Greiner: Your Honor, we offer Exhibit 222, being the overlay.

Mr. Ris: Merely stating that the figures on here were taken from the census data is certainly not a sufficient foundation. We object to it for that reason. If he had census data applied to each one of those blocks, if that's what his—if that's what he determined, fine, let's get the foundation in. If he's using something else, we'd like to know. But, just saying he got it from the census data is not sufficient.

The Court: All right. We will ask him to explain a little more.

Q. Can you explain, please, Doctor, to the Court and counsel, how, first of all, the blue area depicted on Exhibit 222 was calculated?

Mr. Ris: Which is that?

Mr. Greiner: That's the northern area.

A. If we examine the data from the Bureau of Census by enumeration districts and these enumeration districts are very small, usually six-block areas, for each of those small enumeration districts there are certain kinds of racial data and economic data. Those data were used in compiling the [664] percentage non-white in 1960 for the area on the north of Morey and on the west; those areas that were directly assigned to Morey.

Q. Now, Doctor, the blue area which you have just described, that's not broken out by particular enumeration districts, is it? A. Not on this exhibit, but it was compiled from the use of enumeration districts.

Q. Is the percentage given there for the blue area an

average? A. It is an average for all the enumeration districts that are included here in blue.

Q. And how is that average computed? A. By simply assuming the total number of non-whites in those districts that comprise this area and dividing that by the total number in all enumeration districts for 1960.

Q. And then how did you compute the percentage reflected in the yellow area on the south of Morey in this overlay? A. Exactly the same way.

Q. You took the racial composition of— A. Of each enumeration district, and, of course, weighted that by the total number of people in each enumeration district, and that gave us then the average for that yellow area on the south that was assigned to Byers.

Mr. Greiner: Your Honor, we would again offer [665] Exhibit 222.

Mr. Ris: May I voir dire, please?

The Court: Yes.

Voire Dire Examination by Mr. Ris:

Q. Now, your figures, Dr. Bardwell, pertain to the people who were going to be reassigned by the subdistrict boundary changes as of the opening of school in September, 1962, right? A. Yes.

Q. And you were using no figures from 1962 at all, is that correct? A. That's correct, not to draw those boundaries.

Q. You were using 1960— A. 1960.

Q. And you made no studies, no determination, as to what population mobility there was between the 1960 census and Sepember, 1962? A. We did not.

Q. Secondly, this north part, particularly from 17th Avenue to 26th Avenue, was an area in transition, was it not, at that time, or do you know? A. What do you mean by in transition?

Q. Racially, that it had been predominantly white, or portions of it; the northern portions and southern portions [666] of that area were transitional to a certain extent from white to black. A. That is correct.

Q. But you did not investigate and had no figures available to you as to what transition had taken place in the two and a half years or the two years between the census and September, 1962? A. No, we did not.

Q. Also, in that area, were you aware that from block to block there was a very substantial difference in many instances racially? A. Oh, absolutely.

Q. That was not reflected except by enumeration districts? A. That's the smallest possible subdivision for statistics one can get, so in that sense we have not shown it enumeration district by enumeration district, but the average has been compiled on the basis of those enumeration districts.

Q. I understand, but you have no data as to the exact racial composition, block by block, at that time. A. Not block by block.

Q. Also, your enumeration district did not correspond with this particular area north of 17th Avenue either, did they? You had some that were entirely within the area but you had others that overlapped on the north and west? [667] A. In the case of north and west, there were a couple of enumeration districts which were not co-extensive with the boundary there. These are very few in number. And in the case of the southern portion, in the entire enumera-

tion district, it was white, so to assign any part of it would be perfectly correct to assign all of it white.

Q. But insofar as to what extent there had been a change from white to non-white during the two-year period, you have no idea? A. No.

Q. Also, did you attempt to determine to what extent the non-white were Hispano? A. One can get an estimate of that. It is not an official publication that you—I mean, these are not contained officially within the statistics of the enumeration district data, no.

Q. So, you have no figures then as to what these minorities consited of or the non-whites consisted of? A. Oh, yes, what they consisted of—Negro and Oriental. Non-white does not include Hispano.

Q. It does not? A. No, it does not.

Q. Well, in many of your figures here today you have used Hispano as being equivalent to non-white, have you not, minority? [668] A. No, sir, this is the first time the term non-white has ever been used in any of our exhibits, and the reason that one is forced to use that is that this is the only information from the enumeration district data from the Bureau of Census which pertains to a particular minority..

Q. Just so we have our terms correct, Dr. Bardwell, in some of your figures this morning, when you were talking about Anglo and minority, did minority in those instances include Hispano? A. Minority includes Hispano, that's correct.

Q. So, for some purposes Hispanos are minorities and other purposes they are Anglo?

Mr. Greiner: I object to that as mischaracterizing what the witness' testimony has been. The wit-

ness now is testifying as to what the census data terminology is, not our exhibit terminology.

The Court: We will let him answer.

Q. Will you answer the question now, please? A. Will you repeat it?

Mr. Ris: Will you read the question?

The Reporter: "So, for some purposes Hispanos are minorities and other purposes they are Anglo?"

A. (Continued) As far as the Bureau of Census material is concerned, they are classified as whites.

Q. I am talking about your testimony generally from [669] when you started testifying this morning. A. The testimony this morning includes in the minority category, not nonwhite minority. Hispanos.

Q. But, now, is there any distinction between Anglo and white? Maybe we better determine this. A. Well, the Bureau of—

Mr. Greiner: Pardon me, Your Honor, in what respect?

The Court: His mind.

Q. In his mind, or in your testimony at any time? A. Yes, the white category in the Bureau of the Census does include Hispano and—of course, if that information were available separately, it would have been broken down. It is impossible to do here. In the case of the school district data, that information is much more detailed and it is possible then to go ahead and talk about Anglo students as not including Hispano.

Mr. Ris: We object to Exhibit 222 for the reason that there is insufficient foundation to show that the racial background on this exhibit is based upon sufficient foundation as of September, 1962.

Mr. Greiner: Your Honor, in view of the fact that the racial composition north of Morey in 1960 was in a state of transition, I believe that all the voir dire has established is that this exhibit understates the minority composition of the area north of Morey, and if it is inaccurate, it is in fact [670] inaccurate in favor of the defendants.

Mr. Ris: That may be counsel's conclusion, but that's not the evidence, and we are only going on what's in evidence before the Court.

The Court: Objection overruled. It will be received.

(Plaintiffs' Exhibit No. 222 was received in evidence.)

Direct Examination by Mr. Greiner (Continued):

Q. Dr. Bardwell, have you also prepared an exhibit which purports to depict the ethnic composition of Morey, both before and after the boundary change? A. Yes, we have.

Q. That's Exhibit 223? A. Yes, that's correct.

Q. And what is the source of the data included or reflected on Exhibit 223? A. The source of the data on Exhibit 223 are estimates made by us as to the enrollment at Morey and its racial composition in 1961, at the time of the boundary change. These were derived from a study of the enumeration districts themselves.

Q. And can you explain to the Court how that estimate was derived? A. Yes, detailed statistics on the age group

of children living in the enumeration districts which were assigned to [671] Morey and those assigned to Byers, the calculations using those age group data—

Q. What was the age group, Doctor? A. The age group data in this case is ten—the whole group is ten to fourteen.

Q. And then what was done with that age group data? A. That age group data then were classified according to whether the census indicated it was a nonwhite or a white. That's all we could get. Further, imposed upon this were certain data that were available, not by enumeration district, but by census tracts, which gave the Spanish-surnamed population for that area.

Q. These census tracts are larger georgraphic areas? A. The census tracts are larger.

Q. Anything else that was taken into account in compiling this estimate? A. No, that's all.

Mr. Greiner: Your Honor, we at this time offer Exhibit 223.

Voir Dire Examination by Mr. Ris:

Q. I am sorry, Dr. Bardwell, did you say that these percentages are from enumeration districts of the cenus? A. Yes, they are based upon the enumeration districts from the census, that's correct.

[672] Q. These are broken down by Negro, Hispano, and Anglo? A. That's correct.

Q. Will you tell us how you got this then, when the last exhibit we were discussing had only White and non-White? A. It was possible for the construction of Exhibit 222, in showing the racial composition, non-White and White, for the areas transferred to Morey and trans-

ferred out of Morey in 1962, to come up with a precise indication of what the non-White composition was. However, for purposes of determining the three racial categories or ethnic categories for enrollment purposes, those data are not sufficient, and one has to then use supplemental information from the census obtained by census tract to give us an estimate of what the Hispano or Spanish-surnamed aged population is in that particular area.

The Court: Why do you have to go through all of these round-about—

The Witnes: Well, you see, Your Honor, non-White includes—

The Court: I mean, the school records just didn't—

The Witness: No, that's right.

The Court: —show it at all?

The Witness: And we had to make a similar estimate in 1962 because of the unavailability of the same information.

Q. Dr. Bardwell, 1961, is that for the 1961-62 school year? [673] A. Yes, sir.

Q. And 1962 is for the '62-63 school year? A. That's right.

Q. You have the statistics for that available in your own Exhibits 398 and 399, did you not? A. We had total enrollment.

Mr. Ris: May I have Exhibit 398 and Exhibit 399, please?

Mr. Greiner: I think they are still at the bench.

The Court: Yes, here they are.

Q. All right, referring to the junior high part of 398, is that for the school year 1961 and '62? A. May 1st of that year, that's correct.

Q. It would be for that year, would it not? A. Yes, sir.

Q. And Morey shows a membership of 900? A. That's right.

Q. And with 135 Negroes, or 15 percent, right? A. That's what this exhibit shows.

Q. Well, isn't that your exhibit that you identified before? A. Yes, with regard to membership.

Q. And, so, for '61, then, instead of 12 percent Negro at Morey for that year, it would be 15 percent, according to Exhibit 398? [674] A. Right. I would assert that the exhibit here showing the racial composition of the Morey membership, May 1st, 1962, are hunchback estimates on the part of the principal, not shown by actual count, and, therefore, in order to check the reliability of the school district's estimates of the racial composition at Morey it seemed desirable to get an independent estimate. The independent estimate is 71 percent, as we have shown here, and 12 percent and 17 percent.

Q. And that's why you went and did your assumption and inferences and so forth? A. Yes, sir.

Q. Based on 398, it would be 12 percent instead of 15 percent Negro? A. Yes, sir.

Q. If you also look at the same exhibit, it would be 65 percent Anglo rather than 71 percent Anglo? A. That's correct.

Q. And the range would be 20 percent, which you have Hispano, but actually it would be 15 percent Hispano and 5 percent Oriental? A. That's correct.

Q. Now, with respect to 1962, you offered Exhibit 399 showing racial distribution this morning by your own testimony, did you not? A. I'm sorry, I will have to—

[675] The Court: What's that? The Board of Education—

Mr. Ris: This is a racial distribution by schools and years. That would be the school year '62 and '63.

Q. Do you have that before you? A. No, I don't.

Q. I am sorry, I thought you did. Here it is. A. Yes.

Q. And that is racial data for 1962-63 as of January 24, 1963? A. Right.

Q. And there it shows Morey having a Negro population at that time of 27.99 percent or 28 percent rounded off, right? A. Right.

Q. Instead of 33 percent, according to your figures? A. That's right.

Q. And Anglo is 49 percent rather than 45 percent, right? A. That's right.

Q. And the Oriental and Hispano combined would be 23 percent? A. That's right.

Q. So that would change your curve substantially on Exhibit 223, would it not? A. No.

[676] Q. If you use those figures? A. No, it wouldn't.

Mr. Ris: Well, may we mark this? I don't want to make it your exhibit, but I would like to make it 223-A, just for identification.

Mr. Greiner: All right.

Mr. Ris: Make it 223-A, but make it a defendants' exhibit for identification, please.

The Court: You realize you are going to confuse us?

Mr. Ris: That really wasn't my object, to confuse the Court.

George E. Bardwell—for Plaintiffs—Voir Dire

[677] Q. I now hand you a paper that has been marked Exhibit 223-A, and what appears to be black lines, would be the curve shown here, according to your figures. Right? A. (Nods affirmatively.)

Q. And in red would be according to the reference to 398 and 399? A. That's correct.

Q. And red is substantially more level than the other, is it not? A. Well, in 1961 it was a 65-percent Anglo school by your figures.

Q. I'm not saying that—

Mr. Greiner: Could the witness be allowed to finish the response?

The Court: Do you have something else you wish to say?

The Witness: Excuse me, Judge?

The Court: Do you wish to say something further?

The Witness: Yes, I would.

The Court: Had you finished?

The Witness: No.

The Court: Go ahead.

Mr. Ris: Sorry.

A. The general picture for both of these analyses would show generally the same thing, that in 1961 the [678] composition of the student population was 65 percent by your analysis and 71 percent by mine. In 1962 this, by your figure, would be 49 percent Anglo and mine would show 45. The point of it is that it went from a 65-percent Anglo school at the most conservative to a 49-percent Anglo school—

Q. I understand, but, it's a more level curve than yours, was my question. Is that correct? A. Yours is, yes.

Mr. Ris: Thank you. I offer in evidence 223-A.

Mr. Brega: Just a minute. Are you admitting 223?

Mr. Ris: As to its accuracy, yes.

No, I'm not admitting that. I'm admitting this in contrast with—

Mr. Griener: I'm somewhat confused as to this procedure.

Mr. Brega: We will object to 223 before we get to the A part.

Mr. Greiner: As I understand it, 223 is being offered as part of the voir dire examination on—I mean 223-A is being offered as part of the voir dire examination on Exhibit 223.

Mr. Ris: All right. I'll get back to—I got off the point, I admit, on voir dire examination Yes. [679] But I object to 223 for the reason that there is a wholly insufficient foundation because of all the Mickey Mouse that the witness did with the census figures and the estimates, particularly after his last testimony with respect to the last exhibit, that there was no breakdown as he has shown here, and that it's substantial, and in variance with the plaintiffs' own exhibits that he identified this morning and admitted this morning. So I don't think that there is a sufficient foundation for Exhibit 223.

The Court: Well, I don't see the necessity for it, if the figures are available—

Mr. Greiner: Could I have the witness explain why he didn't believe the available school district figures were in fact accurate, Your Honor?

The Court: Yes.

The Witness: In the first place, the figures for 1962 do not cover the opening of school on September 1st of 1962. And because of that, they show instead the racial composition, estimated racial composition in January of 1963. And, therefore, in order to show the precise character of the change in the racial composition at Morey, it seemed most desirable to construct estimates which were very easy to make and should be quite reliable as of the beginning of the opening of school after the boundary change in September of 1962, and that's precisely what was done.

[680] The Court: Did you check that out; that 223 with the figures that were available in January, 1962?

The Witness: We have had those for many, many months. And in fact, much of our IBM tabulation is based upon the best available data in terms of racial breakdown that we can get for appropriate periods. Here was a case where the time period seemed—it seemed was important; to talk about September of 1962 and those figures simply were not available.

The Court: What is the difference? Are the differences susbtantial?

The Witness: No.

Mr. Greiner: They are illustrated, Your Honor, by 223 as compared to 223-A, which has been created by Mr. Ris.

Mr. Ris: I wasn't under oath, I'll admit.

The Court: I don't see very much variance here, Mr. Brega. It seems to me that they are pretty well in line.

Mr. Brega: My position is not that 223 is better put that 223-A or vice versa. It's that the foundation laid for 223 is not appropriate, by the witness's own testimony in his estimate. It's contrary to his own exhibit which he has offered into evidence. He based other testimony on the exhibit which he now says he didn't think was reliable in [681] certain instances.

Mr. Greiner: I believe that's inaccurate, Your Honor.

The Court: It's a highly educated estimate, if it is an estimate.

We will take it.

(Whereupon, Plaintiffs' Exhibit 223 was received in evidence.)

Mr. Greiner: Could we have a ruling on 223-A also?

The Court: We will take that. That will show as Defendants' Exhibit 223-A, is that right?

Mr. Greiner: That's correct.

(Whereupon, Defendants' Exhibit 223-A was received in evidence.)

Direct Examination by Mr. Greiner (Continued):

Q. Now, Dr. Bardwell, you also have in front of you Exhibit 224, do you not? A. Yes, I do.

Q. In the school year 1961, in other words, the year before the boundary change went into effect, what was the capacity utilization at Morey? A. Seventy-five percent.

Q. And what was the capacity utilization at Morey [682] after the boundary change? In other words, in 1962? A. Seventy-six percent.

Q. And at Byers Junior High School in 1961, what was the capacity utilization? A. Just about 88 percent.

Q. And what was it after the boundary change in the school year 1962? A. Ninety-three percent.

Q. And at Cole Junior High School, what was the capacity utilization in 1961? A. About 104 percent.

Q. And what was it in 1962? A. Ninety-six percent.

Q. Now, with respect to the racial composition of Morey Junior High School, referring to Exhibit 223, what does that exhibit show with respect to the racial composition in 1961 prior to the change? A. Seventy-one percent Anglo, 17 precent Hispano and 12 percent Negro.

Q. And what was the racial composition estimated in the school year—

Mr. Ris: I'm sorry. I'm lost. What are we reading from now?

Mr. Greiner: 223. That famous exhibit.

Mr. Ris: Oh, all right.

[683] Q. —for the school year 1962, Doctor? A. 1962, 45-percent Anglo, 22-percent Hispano, and 33-percent Negro.

Q. What percent of Anglos were there at Morey prior to the boundary change? A. Seventy-one percent.

Q. And what percent after the boundary change? A. Forty-five percent.

Q. Referring to the area between Morey and Byers as depicted on Exhibit 220, the area that was assigned from Morey to Byers, do you know, Doctor, whether or not that area was closer to Morey or to Byers? A. The area on the north—to the north of 6th Avenue, that entire area

that was assigned to Byers was closer to Morey than it is to Byers.

Q. Finally, Doctor, I am handing you what's been marked as Exhibit 221. Can you identify that exhibit for us? A. Yes. This shows the boundaries for Morey and they are adjacent to Cole, Baker, Byers and Gove after the boundary change in 1962.

Q. That simply shows the results after the change? A. That's correct.

Q. What optional areas if any remained? A. The only optional area was the area between Morey and Gove that was bounded by Detroit and—well, the street [684] between St. Paul and Adams.

Mr. Griener: Your Honor, we offer Exhibit 221.

Mr. Ris: No objection.

Mr. Brega: No objection.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 221 was received in evidence.)

[684] • • •

Cross-Examination by Mr. Ris:

Q. Dr. Bardwell, the various computer print-outs that were introduced into evidence this morning—those were all under either your direction or supervision? A. They were.

Q. You prepared the program? A. Yes, sir.

Q. Now, with regard to the probability factors that you discussed this morning and with segregation limits that you used in your selective minority schools and selected Anglo schools, if I recall correctly your segregation limits

were this: with respect to the elementary school, the elementary school was segregated if the Anglos in that school were more than 90 percent or less than 30 percent? A. That's right, sir.

[685] Q. And in the junior high, an Anglo school in your segregation limits was segregated if it had 90 or more than 90 percent Anglos? A. That's right.

Q. Or less than 55 percent Anglos? A. Yes.

Q. And that the senior high school, a senior high school was segregated under your definition if it had more than 90 percent Anglo? A. This is right.

Q. Or less than 60 percent Anglos? A. This is right.

Q. So, if a high school had 55 percent Anglo it was still a segregated school? A. Excuse me. Come again with that question.

Q. I mean, it was an Anglo school. It was not segregated? A. It was not segregated— What was your question?

Q. All right. In a senior high school, a school was Anglo and not segregated if it had at the high school level more than 90 percent Anglo? A. Uh-huh.

Q. If it had less than 90 percent Anglo, then what? A. It would depend on how low it was.

Q. Say it was 85. [686] A. If it was 85, that would not be considered—

Q. It would not be a segregated school? A. That's right, according to that criteria.

Q. For 55, what would it be? A. Segregated.

Q. A segregated school? A. Yes.

Q. If it were 59 rather, it would be a segregated school? A. That's right.

Q. And these figures work both ways, either to establish

it as a minority school or an Anglo school? A. Yes, that's correct. That's quite right. And then, you—

Q. Pardon me? A. Let me explain. Suppose we were to visualize for a moment that students in this school district were in a salt and pepper shaker and that you shook the contents of that at each school according to the number of students that are in this school and, if the composition of that salt shaker corresponds to the districtwide proportion of Anglos, you would expect when you build up each school in that way there would be a random distribution of percentage Anglos at each school. What this analysis then amounts to is that, if we now examine the racial composition percent Anglo at a [687] given school and calculate the probability that that racial composition could have arisen by chance, then these are the figures that we are going to talk about when we talk about probabilities.

Q. But these are the figures upon which you made all of your print-outs, with reference to the elementary school level, the junior high school level and the senior high school level? A. That's correct.

Q. And with those percentages in mind? A. That's right.

Q. Reflecting back over the previous six years? A. That's correct.

Q. When you talk about minority schools and the ethnic characterization or the age of the buildings and so forth, your whole testimony then is predicated upon these percentages when you're talking about 21 Anglo schools and 20 minority schools? A. Yes. I would suspect that whatever criterion was used, whether or not we used teachers, whether we used buildings or other indicia or what might constitute segregation, I don't think our results would be a great deal different.

Q. Well, I am asking you what your basis was for coming up with these various schools? [688] A. That's right.

Q. Now, with referenceto Exhibit 250, do you have that there? That's your pupil ethnic distribution, elementary, print-outs. A. 250?

Q. Uh-huh. A. I'm sorry. I don't.

Q. It's a print-out table, Dr. Bardwell.

The Court: Here it is.

Q. Do you have 250 now? A. Yes, sir.

Q. Now, that's a print-out from your computer, right? A. That's right.

Q. And this shows the ethnic distribution of pupils in your 20 minority schools? A. That's right.

Q. And these are the same 20 schools that you have discussed throughout your discussion on minority versus Anglo, right? A. That's correct.

Q. Now, first of all, this shows a total number of students over in the right-hand column for the various years, 1963 to 1968, correct? A. Correct.

Q. And they vary from a low of 13,270 to a high of [689] 14,972? A. That's correct.

Q. Now, then, you have the percentage breakdown of Anglo and Negro. You do not have Hispano in there anywhere, do you? A. That's correct.

Q. Is it correct then that Anglo in this sense means Caucasian? A. A non-Negro, non-Hispano, non-oriental, according to the classification of the school district.

Q. So then, under Negro do you have solely Negroes? A. That's correct.

Q. You do not have Hispano? A. It is not shown on this chart—on this table. One would have to refer to the preceding exhibit, 249, where the spacing on the computer print-out simply did not allow space to add that information again.

Q. So, in addition, on Exhibit 250, 251, 252, for example—I beg your pardon. 250 and 252, you merely show the Anglo and the Negro and the percentages? A. Yes, that's correct. 249 gives you the comparable figures here for the Hispano in terms of number of students.

Q. Now, referring to your 1968 column, you show the percentages of Negroes in all of the 20 minority schools, right? [690] A. That's correct.

Q. And the percentage of Anglos throughout are all, I think the highest one is 29 percent? A. That's right.

Q. So that come under your own percentage of your segregation limits, that a school is segregated if it has less than 30 percent Anglo at the elementary level? A. Yes, that's right. I might add that, if you look at the entire distribution of the percentages for Anglo and enrollment for all of the elementary schools, there is quite a gap after 30 percent.

Q. So then on all of your maps, rather your print-outs and your charts throughout your discussion of the elementary schools as to pupil ethnic distribution, teacher experience, teacher probation, teach median, teacher ten years and plus, age of schools, acre per hundred pupils, and so forth, it is all based on these figures, right? A. That's correct.

Q. And you do that, going back to 1963? A. That's right.

Q. Now, will you take a look at 1963 on Exhibit 250. A. Yes.

Q. Boulevard School had 40.2 Anglos, is that right? A. That's right.

Q. And that's 14 points above your 30-percent cutoff, [691] is it not? A. But you failed to mention that in 1963 the racial composition of the district itself was far different than the racial composition of the Anglo in 1968 and therefore one would have to go through the entire set of computations again if one were to calculate similar probabilities or similar indicia of segregation for 1963. Our figures here are based upon the selection of schools based upon 1968 data only.

Q. But your representation in your charts and all attempt to show what the relationship was in the 20 minority schools in 1963, does it not? A. This was just a convenient means of identifying the school in 1968 and tracing the behavior of that school over the period of time under analysis.

Q. I understand that, but you did go back to 1963 and on your charts you showed what the conditions were? A. That's correct.

Q. But under your own segregation limits, Boulevard was not segregated, not a segregated school in 1963? A. No. I can't say that, because that segregation limit in 1968 is conditioned by two things: one, the size of the school, the number of students enrolled, and number two, in order to find out where we start subtracting and adding, the amount of deviation depends upon the percentage Anglo composition in any given area.

[692] Q. All right, well, then, in Exhibit 249, you had your total population for Boulevard? A. Yes.

Q. And at that time in 1963, you had 180 Anglo, no Negro, and 287 Hispano? A. Right.

Q. So you knew what your population was? A. That's correct.

Q. Well, then, you are relating 1968 figures on your index or your segregation limit back to 1963 when you had a completely different picture? A. When we analyzed the period 1963 to 1968, the whole methodology here is based upon simply the identification of a school and its segregated status according to probability in 1968.

Q. Yes? A. What that school happened to have been prior to that time is merely for purposes of comparative information as to what happened to those 20 minority schools over that period of time.

Q. May we look at Hallett on Exhibit 250? A. Yes.

Q. In 1963, it had an Anglo population of 66.4? A. That's right.

Q. And it was still above your 30 percent in 1964? [693] A. That's right.

Q. Going back to Boulevard, it was above your 30 percent limit in 1963 and 1964 and 1966, was it not? A. That's correct.

Q. Bryant was above it in 1963 and 1964? A. Correct.

Q. Smith was above it in 1963 and 1964, and Wyatt was above it in 1963, '64, '65 and '66? A. Right.

Q. But you never went back to figure what the segregation limits would be in '63? A. No.

Q. And in fact Hallett was a percentage of 66 Anglo at that time and would probably not have been a minority school under your minority classification, would it? A. I don't know whether it would or not. I have not made the computations for the preceding year. It is very likely that a school may change over that period of time from one condition to another, as it obviously has here.

Q. Well, I would ask you then in 1963 of your 20 minority

schools under your own segregation limits if two, four, six were above your segregation limits, were above your limits in 1963, out of those twenty? A. I haven't counted them up. I presume that would be one—

[694] Q. And five would be above your limits in 1964? A. Yes, sir.

Q. And two in 1965 and two in 1966? A. Yes, sir.

Q. And those schools with those limits at that time were reflected in all your various charts you made? A. They can't be.

Q. Aren't they? Aren't they all twenty—for example, take your Exhibit 263, where you show the experience curve for experience of elementary school teachers, experience in the Denver Public Schools. That's based on 1963, '65, '66, '67, '68 for the same schools? A. Exactly right.

Q. And some of which were not minority schools under your segregation limit in earlier years? A. That's correct.

Q. Let's take a look at the high schools, Exhibit 310, Dr. Bardwell.

The Court: Do you have it? A. I have it.

Q. Find it, sir? A. Yes.

Q. All right, now, this Exhibit No. 310 sets forth the ethnic distribution of pupils in your so-called three minority high schools percentagewise for the years '63 to '68, right?

[695] A. That's right.

Q. All right, now, your overlimit, for percentagewise in high schools—a high school was segregated if it had less than 60 percent Anglo?

Mr. Greiner: For what year? I believe that should be established, if the Court please.

Mr. Ris: '68.

A. '68?

Q. Right, then you denominated those as your three minority high schools and worked back from that and back to '63 in working up your charts and statistics? A. That's correct.

Q. Now, in '63, what was the Anglo population at East High? A. 83 percent.

Q. So, at that point it was above your 60 percent level?

Mr. Greiner: Your Honor, I believe counsel is attempting to add apples and oranges. The witness has testified repeatedly that there is no 1963 range established. I object to the improper characterization of his testimony.

The Court: Well, he may cross-examine. To be sure, he said that he used the year 1968 for making or for selecting the several schools. Rightly or wrongly, he did. I assume this line of questions is designed or seeks to undermine some of his analyses with respect to buildings and teachers.

[696] Mr. Ris: Exactly, yes, sir, that's the sole purpose of it.

The Court: I also assume that these schools, most of them at least, were marginally segregated, or well on their way during these years. I mean, I don't suppose there was substantial—

Q. Well, East High was 82 percent in 1963, the first year in your charts here?

The Court: 82 percent Anglo?

Mr. Ris: Yes, sir.

A. That's right.

Q. And the same year, West was 69 percent? A. But you are omitting again, if I might remind you, that the segregated status of the school is not simply the matter of measuring its percentage Anglo composition in a particular year. It must have two additional ingredients. Number one, the size of the enrollment in that particular year, and also the percentage composition of the entire school district.

Q. Well, that very well may be, Dr. Bardwell, and I don't want to argue. I am just trying to get at your basis, because, for example, in Exhibit 323, where you again have experience of senior high school teachers, you begin with 1964 to show a difference between so-called minority schools and so-called Anglo schools? [697] A. That's correct.

Q. And you start right off with East and West as being two of those? A. Right.

Q. Which were in the year 1964, if we look at Exhibit 310, East was then 71 percent Anglo and West was then 62 percent Anglo, were they not? A. Right. I simply might add that if those schools had been left off, according to your analysis, the gap between Anglo and minority schools would have been appreciably wider than what you see.

Q. Did you run any other programs on anything else omitting those schools? Did you run any programs on your computer omitting those schools? A. I made some calculations, but there were no computer programs.

Q. All right, Doctor, on your various diagrams you have merely shown the curves for your minority schools and your Anglo schools? A. Yes.

Q. You haven't shown any information citywide on any of these? A. No.

Q. Citywide invariably would come somewhere between here? [698] A. That's correct.

Q. For statistical purposes in some of the evidence that has come in here previously, medians have been widely used in comparison with medians. A. Yes, sir.

Q. These various charts that you have shown for ethnic composition, experience of teachers and so forth, have you not done any of those as compared to medians, just the high or the two extremes under your theory? A. No, in fact, it would not be possible to involve a median on most exhibits there, because that happens to be a percent and they just aren't—they don't belong on the same scale, because they would be two different kinds of things, apples and oranges.

Q. But if you showed the all-city on these various charts, the deviation between the average all-city in the minority and the Anglo would be substantially narrower, would it not? A. Quite right.

Q. But, if you were doing this on a statistical basis, on a disinterested basis, you would normally show that on all-city, would you not, on a thing of this nature? A. No.

Q. Say, for the planning office of the City and County of Denver, you show all-city and then extremes? [699] A. No, by no means. It depends upon the kinds of graphical display, the purposes of the analysis. The purpose of that analysis is simply to compare two groups of schools, and that is what was done.

Q. All right, now, Dr. Bardwell, this morning you identified and were admitted into evidence the various printouts that you had before you, from which you made the charts? A. That's right.

Q. Then, as you were testifying as to the approximate percentages you were just reading off the charts, is that

right? A. That's correct. I did not have the others at my fingertips.

Q. Pardon? A. I did not have the other exhibits at my fingertips.

Q. Well, you had them there? A. No.

Q. You didn't? A. I had the charts here. I was reading the figures from the scale on either the left or right and it would have had to be an approximation, let's say, within a half percent.

Q. Well, as I followed you, Dr. Bardwell, I found substantially more than a half percent in some instances with reference to the printouts. Now, the printouts are [700] accurate figures? A. They are.

Q. And if there is a variation between the printouts and the charts you made in a curve, the printouts would govern, would they not? A. Absolutely.

Q. I mean, I could spend an hour going through and pointing out your variances off the charts, but if you will concede that much I will save that much time. A. I hope you can point those out to me so I—

Q. Well, there were some that were 2 or 3 percent off, but as long as we have the other evidence there, we won't take time to do so.

Now, with regard to Your Exhibit 267, which was the teacher experience, mean teacher experience between Traylor and the minority schools, you didn't take into consideration in preparing that chart that any new school that opens is invariably staffed with a certain percentage of experienced teachers as a cadre to open that school? A. That's right, quite but the percentage for Traylor School was far above the percentage existing in the minority groups of schools, and they had been open a very, very long time.

Q. I understand. You know what a cadre is, in opening a new institution? [701] A. Yes.

Q. Now, with regard to your figures pertaining to age of the various buildings, again in that instance you have used averages rather than medians? A. Yes.

Q. Did you compute the medians for those ages? A. Yes, I did, in a couple of instances.

Q. Did you compare any exhibits showing the average as to ages of the various schools, minority and Anglo? A. My comment is that from a statistical point of view the median is an appropriate measure of statistics to be used when the information itself is very highly skewed, and in the case of the teacher data, year after year, those data are very highly skewed. And other information concerning buildings and so forth, the average is not highly skewed and therefore the average is more appropriate.

The Court: It is time for our afternoon recess.

(The court recessed from 3:30 o'clock p.m. until 3:40 o'clock p.m.)

[702] (Following a recess, the trial resumed at 3:48 p.m.)

By Mr. Ris:

Q. Dr. Bardwell, with respect to your statistics on the age of the buildings, you considered only the date of the original construction on those buildings? A. That's correct.

Q. Did you put into your computer any factors pertaining to additions to the buildings? A. I did not.

Q. Did you put into your computer any factors pertaining to the type of modernization to any of the buildings? A. No.

Q. Or as to the type of maintenance performed on the buildings? A. No.

Q. So your figures were solely based on the original construction dates? A. That's correct.

Q. And you didn't attempt to make any differentiation insofar as the factor going into your computer with respect to the area? A. Age of the area of the city?

Q. Yes. For example; the older parts of the city as compared to the newer parts of the city? That didn't go into your computer? A. No.

[703] Q. Nor the fact that Denver minorities very often are clustered in some of the older areas, construction-wise? A. No, that's right.

Q. Now, with regard to your Exhibit 390 and various overlays, you referred to the fact that some of those lines from the northeast, particularly to southwest, went right past other schools that were still under capacity according to your figures? That is, as the crow flies? Right? They would go right past it? A. That's correct.

Q. And you didn't mean that as a bus driver would follow through streets and so forth, that they would necessarily go right past it? That was a figure of speech, is that right? A. That's correct. However, I think that a bus route that would depart very far substantially from an indicated line as the crow flies would probably not be a terribly efficient bus route.

Q. You identified previously some charts you got from the school district. You have gone through many records yourself of the school district, have you not? A. That's right.

Q. You and Dr. Klite worked together in this regard? A. That's correct.

Q. Now, 398, Plaintiffs' Exhibits 398 and 399 show racial distribution of students by various categories and [704]

school by school. You have studied these from time to time, have you not? A. That's correct.

Q. And you found these charts beginning in 1962 and up to the present time in the school records, did you, similar to these? A. Yes.

Q. Showing racial distribution? A. That's right.

Q. And you did not find any charts similar to these from 1961 back to 1947, did you? A. Only for particular schools.

Q. On a very limited basis? A. Very, very limited basis.

Q. Now, with regard to this Exhibit 400, the dropout exhibit, you were referring to the projected dropout rate of Cole for 1965 and 1966 as being 12.6, right? A. That's correct.

Q. Now, two years later, 1967-68, it's down to 7.0? A. I would have to take a look at the exhibit, please.

Q. All right.

Mr. Ris: Exhibit 400, please, Mr. Kerr.

The Court: Here it is.

A. That's correct.

Q. So between the 1965-1966 school year and the 1967-1968 [705] school year, the projected dropout rate from Cole had dropped from 12.6 to 7.0? A. After it increased from 1966 from 12.6 to 13.6.

Q. Then it dropped to 7.0? A. That's right.

Q. And Manual had a similar—went from 64.8 to 66 and then down to 57, right? A. 67. You're rounding it on the short side. It should be 67 percent dropout rate for Manual.

Q. All right, 64.8 from 1965 to '66. The next year up to 66.8, the following year down to 57.0? A. That's correct.

Q. And that's the last figure we have? A. That's correct.

The Court: Those aren't your figures anyway, are they?

The Witness: No, sir. These are the Colorado State Department of Education calculations.

The Court: Did you verify them or check them out? Do you think they're accurate and reliable?

The Witness: I convinced myself that they were reliable in terms of the calculations that were actually made. We did not examine the individual data coming from the individual grades submitted by the school district.

Q. Now I will hand you Exhibit 405, which has previously [706] been introduced and which is a study of Pupil Population, School Boundaries, Transportation and School Buildings dated February 1962. You're acquainted with that volume, are you not? A. I am.

Q. And with regard to your testimony concerning the capacity and attendance at the junior high school construction of new schools, if you would look at page 19, please, that gives the estimated pupil membership at the junior high level within the then-existing school district boundaries before the 1962 boundary changes, does it not? A. That's right, in 1960 actual membership, I don't know when that refers to except 1961.

Q. All right. And this chart gives the adjusted building capacity for each of the schools? A. That's right.

Q. And in the 1961 actual membership? A. That's right.

Q. That projected membership for the various schools without the boundary changes here? A. That's correct.

Q. Then if you will turn to page 31, this gives the adjusted building capacity for the junior high schools with the 1961 actual membership. And does this give the estimated membership for the following years assuming the

proposed [707] boundary changes were made in 1962? A. That's what the title states, yes.

Q. At that time the Byers school—Byers, for example, 1961, had an actual membership of 1,094, right? A. I don't know where you're reading that figure.

Q. 1961 actual membership for Byers. A. 1961 for Byers?

Q. Yes, 1,094. A. Oh, that's right, yes.

Q. And the projected then after the boundary change, 1,122, correct? A. That's right.

Q. And would that remain substantially level, 1966 membership at 1161? A. That's right.

Q. That's fairly level for that number of students, is it not? A. Well, if that's level, then it's also as level if we're talking about 1961 actual membership compared with 1962, because the difference there is only 28 students and in case of—in the case of 1963 to 1963 it is 16 students. From 1963 to 1964 you're talking about 56 students. Seems to me that is the level all the way across.

Q. What is the difference between 1961 and 1962? A. 1961 is 16 students and 1962 is nothing more than [708] 28 students.

Q. And then it goes up to 1138? A. Right.

Q. 1194? A. Right.

Q. And then begins to drop? A. That's right.

Q. And Morey, they anticipated going from 894 with a capacity of 1170 in 1961, right? A. That's right.

Q. And bringing it up to capacity by roughly 1964? A. Yes, that's what these figures show.

Q. And by 1966 it would be over capacity by what? 50 pupils? A. There is considerable difference between the figures that actually took place.

Q. Oh, I understand, sir. A. I just wanted to remind us of that.

Q. But these were the figures that everyone was operating under in 1962, and not on your printouts after the fact? A. Well—

Q. Isn't that correct? A. No, I would have to take issue, simply because if you examine your own report on May 3rd, 1962, with regard to the membership at Morey and at Byers and Cole, they are [709] quite different.

Q. As to the actual membership? A. That's right.

Q. In 1962? A. That's right.

Q. In May? A. In May.

Q. But what we're referring to here is 1961. And, it's a variation between 1961 and 1962. And, this shows a projection for 1962. A. Well—

[710] Q. This shows projection for '62? A. I would assume that 1961 actual membership is that membership for the school year 1961.

Q. What document are you referring to in May— A. 398.

Q. With respect to projections, however, you were aware that they were doing some projecting? A. Oh, yes.

Q. All right, now, your figures are not a projection, but they are looking back and going back to taking actual figures over the subsequent years up to the present time or through '68, is that correct? A. I would like you to repeat that, please.

Q. Well, all I am saying is that the figures, the projections here, are predictions. A. That's correct.

Q. And your figures are putting through a computer actual attendance figures and all information the last five or six years? A. Yes.

Q. And those computers—all I am saying is that the computer printouts were not available to the board and administration in 1962. A. No, but the information they had available in Exhibit 398 apparently was available to the board.

[711] Q. Does that tell anything about what's going to happen in 1963 or 1964 or 1965? A. Of course not.

Q. All right, and the various charts, the various printouts, and then the charts you have made and so forth for the years '63, '68 and so forth, those are after the fact? A. Yes.

Q. As you prepared for this trial? A. Yes.

Q. You mentioned that in the '62 boundary change there was one area east of Cheesman Park that was assigned to Byers. Now, is that the area that was immediately to the south of what used to be known as Mount Calvary Cemetery? A. That's correct.

Q. And is now Botanical Gardens? A. That's correct.

Q. It runs a block and a half, I believe, from 8th Avenue to just a little north of 9th Avenue to where you get to the Botanical Gardens area? A. Yes, that's correct.

Q. And that's the only part that was made—that's what you had reference to when you said an area east of Cheesman Park had been assigned to Byers? A. Yes, in addition to the area on the south.

* * * * *

[719] * * *

Redirect Examination by Mr. Greiner:

Q. Dr. Bardwell, when you selected the schools identified in Plaintiffs' Exhibit 241, the 41 elementary schools, the junior high schools there depicted, senior high schools, their racial composition was the sole criteria that you used, was it not? A. That's correct.

Q. Now, the other exhibits that have been put into evidence based on the computer printouts, they involve such things as percentage of probationary teachers, and those exhibits show that there is a correlation of the percentage of probationary teachers in a school and race, do they not? A. That's correct.

Q. And the same thing holds true, the same correlation with respect to teachers with no prior DPS experience? A. That's correct.

Q. And also teachers with ten or more years' experience, is that correct? [720] A. That's correct.

Q. And schools with high median years experience, there is also a correlation with race, is there not? A. That's correct.

Q. So we didn't start out each time with each one of those categories which I just mentioned and select a new group of schools, did we? A. No, the relationship between these is very highly correlative with race and very persuasive in terms of that subdivision.

Mr. Greiner: I have no further questions.

Mr. Ris: I have nothing further.

Mr. Brega: I have nothing, Your Honor.

The Court: Undoubtedly, you have a reason for using 1968 as the determinative year?

The Witness: It is the most current year.

The Court: Presently, as far as this lawsuit is concerned, right?

The Witness: Yes, this was the whole matter of looking at that school in terms of what would be needed to change its racial composition, based upon probability analysis, was a part of it—in a sense looking ahead.

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Robert L. Hedley—for Defendants—Direct

[752] • • •

ROBERT L. HEDLEY, a witness called by and on behalf of defendants, having first been duly sworn was examined and testified as follows:

Direct Examination by Mr. Creighton:

The Court: Give us your name and address, please.

The Witness: Robert L. Hedley, 1775 South Ames, Denver, Colorado.

By Mr. Creighton:

Q. Mr. Hedley, are you employed by School District No. 1 of the City and County of Denver? A. I am.

Q. When were you first employed by the School District? A. In 1951.

Q. And you have been employed continuously since that time? A. Yes, sir, I have.

Q. What was your first assignment in that employment? A. As a teacher.

Q. Where was that? A. At Cole Junior High.

Q. What was the date of your next assignment? A. 1955.

Q. And where was that? [753] A. As a teacher at Schmitt Elementary School.

Q. Then your next assignment? A. Next assignment was Planning Services at the Administration Building as a teacher on special assignment.

Q. What date was that? Was that in 1961? A. Yes.

Q. And what time of year that year? A. That was in the fall of the year, September.

Q. What were your initial duties when you were as-

signed to Planning Services? A. My initial duties were to help in the preparation of graphic materials for presentation to staff members and board meetings and to assist in preparing reports for Planning Services at that time.

Q. At that time who was your immediate superior? A. Dr. C. E. Armstrong.

Q. And what was his position or title? A. He was Executive Director of Business Services at that time.

Q. Was he in turn under an assistant superintendent at that point? A. Yes, he was.

Q. Who was that? A. Graham Miller.

Q. What was Mr. Graham Miller's title? [754] A. He was Assistant Superintendent for Business Services.

Q. Then did Business Services include at that time Planning Services and Engineering? A. Yes.

Q. And you were in Planning Services part of that time? A. That's correct.

Q. Was that administrative structure changed thereafter? A. Yes, it was.

Q. When was that? A. I believe in 1963 when Mr. Miller retired, that division was split into two parts.

Q. What were those two parts? A. One part remaining Business Services and the other becoming Division of Planning and Engineering.

Q. Were those both headed by the Assistant Superintendent? A. No, they were split. Dr. Armstrong was one Assistant Superintendent and Mr. Ed Olander was the other assistant.

Q. But they were both Assistant Superintendents? A. That's correct.

Q. Both heads of these two departments? A. Right.

[755] Q. And Mr. Olander was head of Business Services, was he? A. Yes, sir.

Q. And Engineering and Planning Services remained then under Dr. Armstrong? A. That's right.

Q. And how long did that administrative arrangement last? A. It lasted until the present time. It's still the same.

Q. And you have been in Planning Services the entire time since you were assigned there? A. Yes, sir.

Q. Was your title or assignment changed since your initial assignment to Planning Services? A. Yes, I have been changed two times; approximately a year and a half as a teacher on special assignment, and then to coordinator for two years, and then to supervisor, which is my present classification.

Q. What year—when did you become coordinator? A. About 1963 or 1964.

Q. And when did you become supervisor? A. 1965.

Q. And that is your present assignment? A. That's correct.

[756] Q. In the summer of 1962 did you have any function or role in connection with the efforts and work of the Special Study Committee? A. Yes, I did.

Q. Briefly what were those? A. We prepared some graphic presentations for the use in their report that they were going to give to the Board.

Q. Did those include representation of census data? A. They did, yes.

Q. Did those ultimately appear in the appendices of the report of that committee? A. Yes, they did.

Q. When you became coordinator what were your basic duties at that point in 1962—or 1963? A. In those years I still maintained the responsibility of preparing graphic presentations, and I also was introduced to the responsibility of furniture program for the Denver Public Schools.

Q. Did you have any responsibility for maps? A. Yes, I did.

Q. When did that responsibility begin? A. In 1962.

Q. And what was that responsibility? A. It was my responsibility to prepare all boundary maps during the summer, but specifically in July, on a base [757] map that was acquired from the City and County of Denver, and to make sure that all changes were made that were directed to be changed, and that all boundary maps were approved by the appropriate official and presented to the schools in various administrative offices for the following school year.

Q. Now, this work was done in July of each year? A. That's correct.

Q. What sort of information aside from the base map that you have mentioned did you use for determining what the boundary map the following year would look like? A. All those changes that were approved and adopted by the Board were put on there.

Q. Put on where? A. On the new map.

Q. Well, how did you get that information? How did it come to you? A. It came to me from my superior, Dr. Armstrong.

Q. Then you prepared the map, did you? A. That's correct.

Q. Did any of your superiors approve this map? A. Yes, sir.

Q. Who was that? A. Through the years it was Mr. Howard Johnson, and the last year it was Dr. Armstrong.

Q. So you prepared the map from information from the [758] head of your department and sent the prepared map back for final approval by the head of your department or Mr. Johnson? A. Uh-huh.

Q. At the time you commenced to prepare these maps, as you have described, in 1962, were there other maps in the files of the District for prior years? A. Yes, there was.

Q. What maps were there? A. I found in the record that we had master copies of the School District's maps for 1960.

Q. Did you have one for 1961? A. Yes, we did.

Q. Well, have you found at any time official maps prior to 1960? A. Yes, I found the 1956 base map, which also included the changes for 1957.

Q. When did you find that map? A. Just, oh—in the past three or four months.

Q. And in 1956 when that map was prepared, whose responsibility was it for preparing it? A. Engineering Services.

Q. And where did you find that map? A. That was in their files.

Q. Could you find any other maps for the period prior to 1960 from Engineering Services? [759] A. No, sir.

Q. And did your Planning Services file show any? A. None.

Q. Now, 1962, when you took on this responsibility for maps, did you do anything further in connection with organizing the records and files of your department regarding the boundaries? A. Yes, sir, I started to maintain a written description of all boundaries and developing those into three sets, elementary, junior and high. And then through the years I had this responsibility, I always kept master maps of each year that were responsible for preparing these maps.

Q. These boundary records—are they kept by you in your department now? A. Yes, they are.

Q. What did you say the annual distribution of each new year's map was, Mr. Hedley? A. Every elementary school, junior and senior high, and the administrative offices.

Q. Mr. Hedley, if you would step down and get a map marked for identification as Defendants' Exhibit AA and mount it on the easel.

Mr. Creighton: Your Honor, is this a suitable place for all concerned? We thought it might be better on this side near the witness stand. Is it suitable with other counsel?

[760] Mr. Greiner: I believe so.

Q. Now, directing your attention to the map marked for identification Defendants' Exhibit AA, did you prepare that, Mr. Hedley? A. Yes, I did.

Q. Was there an official map in existence—is there an official map in existence for that year? A. No, sir.

Q. And that year again is what? A. 1936.

Q. What base map have you used for that exhibit? A. The base map here is a 1956 base map.

Q. Is that the earliest base map you could find? A. Yes, sir.

Q. Have you shown the limits of the School District on that map? A. Yes, the limits in 1936 in the School District in the City and County of Denver is indicated by a red line.

Q. And where do you get that information? A. This information was obtained from our annexation maps, which we received from the City and County of Denver Planning Office.

Q. You keep annexation maps current and complete in your files? A. Yes, sir, I do.

[761] Q. Have you also shown the boundaries of the junior high school subdistricts in 1936? A. Yes, sir, they are indicated by the dark black lines.

Q. Now, is the black line consistent with your modern map? A. Yes, as you will see, when we go through here, they all show in the dark black lines.

Q. Does that base map show schools not in existence in 1936? A. Yes, these schools outside of the District in those years are shown with a red "X" over them. It means they did not exist, and also within the City and County they did not exist, schools and sites.

Q. Mr. Hedley, in the absence of an official map for that year, how have you determined where to place the subdistrict boundaries? A. We have the main 1921-26 Superintendent's circulars that describe the junior high boundaries and what elementary schools they included, and we also used the 1932 elementary boundary line description circulars that were in that same group.

Q. Are they maintained in your boundary books? A. Yes, they are.

Q. These descriptions, are they set forth in words in a descriptive form? [762] A. Yes, they are.

Q. And how are junior high school boundaries defined in the circular you referred to? A. Basically, they say that the pupils that will attend a certain junior high school will be from a certain elementary subdistrict and its optional areas.

Q. Now, did you have any information on the elementary districts then? A. Yes, I did for 1932.

Q. '36? A. '32.

Q. And where was that information? A. That was in the circulars.

Q. Was the 1932 data unchanged until 1936? A. Yes, sir, that's correct.

Q. Then you used the elementary data and the description in the circular to establish the boundaries, is that correct? A. Of the elementary schools, and they in turn helped describe the boundaries of the junior high schools.

Q. Let me interrupt a moment, Mr. Hedley. For the record, I believe you said your "X's" are red. They are in fact what color? A. Excuse me, they are green.

Mr. Creighton: Your Honor, the defendants offer in evidence Exhibit AA.

[763] Mr. Greiner: No objection, Your Honor.

The Court: We will take it. Exhibit AA is received in evidence.

(Whereupon, Defendants' Exhibit AA was received in evidence.)

Q. Mr. Hedley, have you shown in addition to the subdistrict boundaries optional areas? A. Yes, sir.

Q. How many optional areas were there at the junior high level in 1936? A. In 1936 there were thirteen optional areas as indicated here with the blue "Optional" and the schools to which they were optional.

Q. Did every junior high school have an optional area? A. Yes, sir, in this case, they did.

Q. Did everyone have two of them? A. In most cases, they had two optional areas, in some cases three.

Q. Now, Mr. Hedley, up in the upper left-hand corner, in the northeast or northwest corner of the District, what junior high school is that? A. This is Skinner Junior High.

Q. How have you indicated that? A. It is located with the blue line and the rectangular form around the school.

[764] Q. That's just to locate the school? A. Indicate where the school is within that district.

Q. Did Skinner have optional areas? A. Yes, they had two, one in this location here, which was optional between Skinner and Horace Mann, and one down here which was optional between Lake, Skinner and Mann.

Q. A three-way option? A. That's correct.

Q. And those are respectively on the northwest and northeast corner of the Skinner subdistrict? A. That's correct.

Q. Then, moving to Mann, in addition to the Skinner option, did it have others? A. It had this large optional area here to the east, which was optional between Mann and Cole.

Q. And that extended to the— A. The city limits on the north.

Q. And on the— A. 17th here, approximately 17th Street.

Q. And was the river involved in that boundary? A. Yes, this river is indicated here.

Q. And then moving on to Cole. A. Located here.

Q. What other optional areas besides the Mann area did it have? [765] A. Cole had these three optional areas: Here, one between Cole and Smiley; this one, three-way, Cole, Smiley and Morey; and this one, which was optional between Cole and Morey.

Q. Those are generally on what side of the Cole district? A. This would be on the east and on the south.

Q. Then, Cole, Smiley—this brings us to Smiley. In addition to the Cole option, what other optional area did

Smiley have? A. We have this large optional area here between Smiley and Gove.

Q. Generally, on what side of the Smiley district? A. It was on the southeast side of the district.

Q. And did that extend to the city limits? A. City limits, taking out Lowry Air Force Base.

Q. You have eliminated the Lowry area from your boundaries? A. That's correct.

Q. Even though it was technically in the city limits? A. Right.

Q. Then, Smiley optional to Gove, move to Gove—did Gove have other optional areas? A. Gove was here. Gove had this optional area between Morey and Gove, besides this large one here.

[766] Q. And that generally was on what side of the Gove district? A. This was south, and then the small one down here, which was optional between Morey, Gove and Byers.

Q. That was south of the river? A. South of the river, yes.

Q. Does that indicate that the mandatory Gove area was quite small compared with its total size? A. Yes, that area was approximately this location.

Q. And because of the distance to the bench, please outline the total boundaries of the Gove area, including its optional areas. A. Including its optional areas, it would be this area here.

Q. Then, the Gove-Byers optional leads us to—or, rather, Gove-Morey leads us to Morey. Did it have other optional areas? A. Yes, as indicated before, we had the optional between Morey and Byers, Morey and Gove, and Morey and Cole.

Q. Then, moving on to Byers, in addition to the one you mentioned with Morey, what others did Byers have? A. Byers had the one that was optional between Byers and Grant, and then the three-way, Baker, Byers, and Grant.

Q. Was there another one for Byers that you previously mentioned? [767] A. Just the small one here.

Q. Then I think you have mentioned then that Grant had two optional areas that year. A. Yes, Grant had this one with Byers, and then the three-way with Baker, Byers and Grant.

Q. And that leads to Baker. Did Baker have any other optional areas? A. Baker was here, and they had this large optional area to the west that was optional between Lake and Baker.

Q. Generally, across the Platte River? A. That's correct.

Q. Extending to the city limits? A. To the city limits on this side.

Q. All right, would you please get before us on the other easel, Mr. Hedley, Exhibit AB?

Mr. Hedley, this purports to represent what subject and what years? A. This is a senior high school boundary map for 1936.

Q. What is your source and method for the preparation of that map? The same as the 1936 junior high map which is AA? A. Yes, sir, they were. We want to determine—

Q. Excuse me, Mr. Hedley, the circular which was the source for junior high maps, how does it describe the senior high boundaries? In terms of what? [768] A. Those attendance areas for the senior high would include those junior highs and their optional areas and name the

junior high schools that would attend that senior high school. In some cases, it gave elementary schools.

Mr. Creighton: Defendants offer Exhibit AB.

Mr. Greiner: Could I inquire of Mr. Hedley, Your Honor, as to whether there are any estimates containing Exhibit AB?

The Witness: No, sir, there is not. It is directly from the circulars.

Mr. Greiner: Were there any estimates on AA?

The Witness: No, sir.

Mr. Greiner: We have no objection, Your Honor.

The Court: Exhibit AB is received.

(Whereupon, Defendants' Exhibit AB was received in evidence.)

Q. Mr. Hedley, have you adopted the same convention on AB as on AA with respect to showing the city limits and, therefore, the School District limits, the red line, and the same convention with your green "X's" as to the schools that were not in existence at that time? A. Yes, they are the same.

Q. And you are consistently using a black line to delineate the subdistrict boundaries and the optional portions thereof? [769] A. That's correct.

Q. How many high schools were there in 1936? A. There would be five high schools.

Q. And how many optional areas were there? A. Basically, there were six optional areas.

Q. Do you have a different convention here for locating the high schools? A. Yes, I have circled the high schools with the blue marking that you see here.

Q. Taking North High School, how many optional areas

did it have? A. North had this optional area here and this one to the east, between North and West, North and Manual.

Q. And moving on to Manual, in addition to the one with North, did it have another? A. Yes, it had this optional area here, East and Manual.

Q. Generally to the south and east. A. To the east, that's correct.

Q. And that takes us around to East. Did it have any other optional areas besides the one with Manual? A. Yes, it had the one with Manual and also one with East, West and Manual; and East, West and South, on the south and west of the district of East.

Q. And that moves around to South. Did it have any other optional areas? A. Yes, it had the one to the north that was optional [770] between South and West, and the one we mentioned before, East, West, and South.

Q. And, finally, completing the circle, West has how many? A. Had this one here, North and West. This one, East, West and Manual; and the West and South.

Q. And it had yet another, didn't it, that year with South and East? A. This one here. It actually had four.

Q. Yes. A. No, the three, this one, this one and this one—total of four.

Q. Yes. All right, Mr. Hedley, would you bring out Exhibit AC and will you put it over AB, so that AA and AC will be side by side?

Mr. Hedley, directing your attention to the map marked for identification Defendants' Exhibit AC, which is labeled, "Junior High, 1955," did you prepare that? A. Yes, sir, I did.

Q. And did you have an official map for 1955? A. No, I did not.

Q. What is the base map for that? A. The base map is the 1956 base map.

[771] Q. You used the base map for the year immediately following; is that correct? A. That's correct.

Q. Now, how did you go about, Mr. Hedley, preparing a map for 1955 using the 1956 base map? A. We used the 1956 junior high map to construct our boundaries for 1955. We also used our boundary line description books with the information that was available there and in some cases Board minutes.

Q. Now, do your boundary books show any change, for example, or—what change if any is shown in your boundary books and by these two maps in the—

Let me withdraw that question, Mr. Hedley, and ask you first—Did you use the same dimension of black line to delineate subdistricts and— A. Yes.

Q. —and optional boundaries? A. Yes.

Q. Are optional areas especially represented on this particular map? A. The optional areas on this map are shown in the cross-hatch and underlined—with the schools underlined in blue.

Mr. Creighton: The defendants offer in evidence Exhibit AC.

[772] Mr. Greiner: May I inquire, Your Honor.

Voir Dire Examination by Mr. Greiner:

Q. The western boundary, Mr. Hedley, of this optional area between Cole and Smiley—you show—what streets are these? A. These are not streets. They go down alleys here. This is Franklin and High. This is Columbine district, and this at that time was the Adams Street district—The line we were discussing is Franklin, and the line going

down the middle of the block between the two streets and on the north here—we get to 29th and 28th, and it splits that block.

Q. And then just north? A. Then it goes over and splits this block between Race and High, and then it goes down the middle of the street up here.

Q. What is your source for that line, that western line? A. This was in 1936 circulars—it indicated that the Adams Street, which is Harrington here and Columbine district was optional district between East and Manual, and Cole and Smiley. And the line has remained the same.

Q. You looked at what between 1936 and 1955? A. School Board minutes, which indicated that there were no secondary changes in this area.

[773] Q. So Exhibit AC then depicts the western boundary as it was in 1936? A. That's correct.

Mr. Greiner: No further questions. We have no objection, Your Honor.

The Court: AC is received.

(Whereupon, Defendants' Exhibit AC was received in evidence.)

Direct Examination by Mr. Creighton (Continued):

Q. Now, Mr. Hedley, comparing Exhibit AC which is the junior high situation in 1955 by your map and Exhibit AA which is the 1936 situation, nineteen years earlier, were there any changes in the Cole-Smiley junior optional areas? A. This small change here in 1955 is all Morey-Cole. And here, there was an optional area between Cole, Morey and Smiley.

Q. Any other changes in the— A. The east end of the Adams Street district then which was extended out here beyond the Park Hill Golf Course was cut back to Colorado Boulevard, which included the Park Hill Golf Course.

Q. And by 1955, Mr. Hedley, were there optional areas in all four quadrants of the city? A. Yes, sir.

[774] Q. Where were they? A. Skinner Junior High has two optional areas between Horace Mann and Skinner. This one between Lake and Skinner, and the one that we have mentioned working around Gove. Gove had this one that was optional between Morey and Gove. This one—Morey and Gove. And, then Morey had one optional between Morey and Byers, and this one, Morey and Cole that we mentioned. And this one was Morey and Baker. This optional area was Byers and Merrill at that time. This optional area was Byers and Kepner. This one was Baker, Byers and Kepner. This one was Baker and Lake.

Q. Count up the number of separate optional areas. A. I think there were eleven.

Q. That's in 1955? A. That's correct.

Q. Now, Mr. Hedley, would you get in front of us Exhibit AD and let's put that over AA so that we have AC and AD side by side.

Directing your attention, Mr. Hedley, to the map marked for identification Defendants' Exhibit AD, did you prepare that? A. This was—

Q. Did you prepare it? A. I prepared the map, yes.

Q. Did you have an official base map for that? [775] A. Yes, this was the official base map in 1956.

Q. Now, have you changed the delineation of boundaries from the base map? A. They are still indicated with the dark black line here.

Q. That's the line that—that line has been widened but of course not the location? A. That's correct.

Q. And aside from that change, what other changes have you made to the base map, that is, have you added orange lines for example? A. This actually is a new boundary line here indicated by an orange line.

Q. The orange lines then indicate new boundaries? A. Yes.

Q. What point in time? A. This was in January 1956.

Q. And the arrows—the blue arrows indicate what? A. This means that Hill, a new school, opened in January of 1956, and it means these areas were assigned to Hill. These areas were assigned to Gove here.

Q. On that date? A. That's correct.

Mr. Creighton: The defendants offer Exhibit AD.

Mr. Greiner: No objection.

[776] The Court: Very well, AD is received.

(Whereupon, Defendants' Exhibit AD was received in evidence.)

Q. Now, Mr. Hedley, referring to Exhibit AD, was Hill a new junior high school at that point? A. Yes.

Q. And that was January 1956? A. Correct.

Q. What former subdistricts—junior high subdistricts yielded territory to make up the Hill district?

Mr. Greiner: Could we have it identified in point of time, please, Your Honor?

The Court: I think we are in 1956.

Mr. Creighton: I believe we're in January.

The Witness: January of 1956.

A. The southern part of the Gove district which was here in 1956 is assigned to Hill, and this small part of the Morey district which was the Ellsworth Elementary subdistrict was assigned to Hill. Then this northern part of Gove above the black dotted line which was Smiley is now assigned to Gove. And, that part south of the black dotted line was in Gove and it still is Gove.

Q. What were generally the west and south boundaries of Hill when it opened in January 1956? A. The south boundary here was the river and city [777] limits, which is the Town of Glendale here, and approximately Cook and Steele Streets on the west.

Q. How about the east? A. On the east it was the city limits again taking out Lowry Field.

Q. And on the north? A. On the north, approximately 17th Avenue here up to 11th Avenue here.

Q. What do the black lines mean? A. The dotted black lines indicate the boundary in 1955 which appears on that map.

Q. You're referring now to AC? A. Yes, sir.

This dotted line here (referring to AD) was the optional area between Gove and Morey.

Q. You're referring to the arrow south of the Hill site? A. This is correct.

Q. Now the new Gove line indicated in orange you said generally—how did it run? A. The northern line is up here. It came down Montview and then down to 17th Avenue and out to and includes the Ashley district.

Q. Ashley elementary? A. Ashley elementary school.

Q. Now, Mr. Hedley, according to your records and files, [778] are those the only junior high changes made at that point in time, namely, January 1956? A. Yes, that's correct.

Q. Please bring out Exhibit AE.

You now have Exhibit AE on the easel along with AD, do you not? A. That's correct.

Q. Directing your attention to Exhibit marked Defendants' Exhibit AE, did you prepare that? A. Yes, sir, I did.

Q. Does it purport to represent junior high school boundaries in September of 1956? A. That's correct.

Q. You had an official base map for that year, did you not? A. I did.

Q. And have you again made the subdistrict boundaries in solid black? A. That's correct.

Q. And have you again indicated optional areas by hatching in blue lines? A. That's correct.

Q. Now, have you carried over to this map AE, the January 1956 changes appearing on Exhibit AD? A. Yes, we indicated the dotted orange line as to those [779] changes that were made in 1/56.

Q. By that do you mean January 1956? A. That's correct.

Q. And does this show other changes effective prior to September 1956? A. Yes.

Q. What is that? A. This change here—the optional area between Cole and Smiley, this area west of York Street, was assigned to Cole Junior High, part of it being Smiley; part of it being the optional area between Morey and Cole.

Mr. Creighton: Defendants offer in evidence Exhibit AE.

Robert L. Hedley—for Defendants—Voir Dire

Voir Dire Examination by Mr. Greiner:

Q. With respect to the Cole-Morey optional zone, Mr. Hedley, is any portion of that estimated? A. This area here?

Q. Yes. A. No, sir.

The Court: This was given to Cole? This had been an optional area?

The Witness: This was optional here. From the dotted line south through here was optional between Morey and Cole. This area was optional up here between Cole and Smiley. Both [780] areas were given to Cole.

Q. This red line here depicted that runs— A. That's a new boundary.

Q. That runs on what street? 22nd? A. 21st.

Q. And that corresponds with this black line on Exhibit AC? A. Yes, extended through there.

Mr. Greiner: No objection.

The Court: Very well, Exhibit AE is received.

(Whereupon, Defendants' Exhibit AE was received in evidence.)

[781] The Court: That wasn't related to the opening of Hill, was it?

The Witness: That was not, no, sir.

The Court: It was the Gove and Smiley boundary changes that you have already described that came out of the Hill opening, I take it?

The Witness: That's correct.

Direct Examination by Mr. Creighton (Continued):

Q. All the changes, Mr. Hedley, shown on Exhibit AE occurred between January and the following September, the same year, is that right? A. That's right, all these changes occurred in 1956.

Q. Mr. Hedley, let's set down the junior high maps, for the moment, and get at Exhibit AF. A. (Witness put exhibit on easel.)

The Court: Any objection to AF?

Mr. Greiner: We would like to take a look at it, Your Honor. We didn't have copies of these.

The Court: All right, go ahead.

Mr. Creighton: I would like the record to show, Your Honor, that as fast as these were prepared, counsel came over and looked at them at the workshop where they were in preparation.

The Court: Well, we will give him another peek [782] at them.

Mr. Greiner: Just one question, Mr. Hedley. The western portion of the optional zone down in the southwest corner of this optional zone between East and Manual, how did you determine the western boundaries of that?

Mr. Creighton: Excuse me, counsel is referring to Exhibit AF?

Mr. Greiner: Yes.

The Court: Right.

The Witness: We referred to the 1951 elementary boundaries, Wyman School.

Mr. Greiner: And what was the basis for concluding that there was a coextensiveness there?

The Witness: Usually, in the past, that the boundary lines would always follow the same boundary line of an elementary school, so we just estimated that that's what it followed.

Mr. Greiner: So, that line then is an estimate?

The Witness: That's correct.

Mr. Greiner: It is not reflected in any board minutes?

The Witness: That's right.

Mr. Greiner: With that understanding, Your Honor, we have no objection to AF.

The Court: Exhibit AF will be received.

[783] (Whereupon, Defendants' Exhibit AF was received in evidence.)

Q. Mr. Hedley, does Exhibit AF then purport to show the senior high school boundaries in 1955? A. That's correct.

Q. And what base map did you use? A. This is a 1956 base map.

Q. And it shows three senior high optional areas, does it not? A. That's correct, this one here optional between East and Manual, this one optional between South, East and West.

Q. And what's the north line of the South-East-West option? A. This line here is 6th Avenue and the small optional area here between South and West.

Q. And what's the south line of the three-way South-East-West option? A. This is it, Cherry Creek.

Q. So, it extended from 6th on the north down to the Cherry Creek and all the way out to the city limits? A. That's correct, taking out Glendale.

Q. Then there was a relatively small one? A. Small one here between South and West.

Q. Let's get before us, Mr. Hedley, one we formerly [784] discussed, which is Exhibit AB, and let's put it alongside. A. (Witness put exhibit on easel.)

The Court: Is that the year '35?

Mr. Creighton: '36, Your Honor.

The Court: '36.

Q. Mr. Hedley, if we put Exhibit AB alongside Exhibit AF, can one compare the senior high schools and their optional areas as between 1936 and 1955? A. That's correct.

Q. Has the optional East-West-South area persisted during that period? A. Yes, it is basically the same, except the city limits in this particular area.

Q. In '55? A. Has been extended in 1955, where it was here in 1936.

Q. And how about the optional area between Manual and East? How do they compare? A. Here in 1955, it was smaller than it was in 1936, this area here east of Colorado Boulevard being dropped off and this area west of this area being diminished to this line that we indicated a while ago.

Q. And the— A. The other—

Q. Mr. Hedley, the first portion of the optional [785] Manual-East you mentioned as being taken off the same as the junior high, and that is the Park Hill Golf Course area? A. That's correct.

Q. All right. Now, Mr. Hedley, if you will set down those two exhibits and please bring up Exhibit AH. I beg your pardon, AG, and please put AF alongside it.

Directing your attention to the exhibit marked for identification Defendants' Exhibit AG, Mr. Hedley, did you prepare that exhibit? A. Yes, sir, I did.

Q. And did you have an official map for that year? A. This is the official base map, 1956.

Q. Have you again made the subdistrict lines in solid black? A. That's correct.

Q. And have you added anything else to that base map, official map? A. We have shown the changes that took place in here.

Mr. Creighton: Defendants offer in evidence Exhibit AG.

Mr. Greiner: Did you find the board minutes, Mr. Hedley, that show the change in the boundaries in the East-Manual optional area which are illustrated between a comparison of AG with AF?

[786] The Witness: I believe the board minutes indicate that it gave this optional area, described optional East and Manual, said all other areas west of this area and York Street would be assigned to Manual.

Q. And that's depicted by a dotted line on AG, is that correct? A. Yes, that's the old optional part.

Mr. Greiner: We have no objection, Your Honor.

The Court: It will be received.

(Whereupon, Defendants' Exhibit AG was received in evidence.)

Q. Well, now, we can set those down, Mr. Hedley, and move on to AH, please.

The Court: Is that the last one?

Mr. Creighton: I regret to say we have a number more.

The Court: During the recess, why don't you show these all to Mr. Greiner and we will receive the whole works and we don't have to go through this.

There is no point—do you want to do it?

Mr. Creighton: We have a litle comment, much less on the later maps.

The Court: You can comment all you wish. I do not see why they should be all identified, if you can agree.

Mr. Creighton: We will discuss it.

[787] The Court: We will take about a twelve-minute recess.

(The Court recessed from 3:27 o'clock p.m. until 3:45 o'clock p.m.)

[788] (Following a recess, the trial resumed at 3:50 p.m.)

The Court: Can we receive all of these maps?

Mr. Greiner: Your Honor, we have reviewed maps AF, AI, AJ, AK, AL, AM, AN, AO, BA, BB, BC, BD, BE, and BF, and while we may have some minor differences of opinion as to the correctness of some of those, that can be brought out on cross-examination. And subject to that, we have no objection.

The Court: Very well, we will receive all of them.

(Whereupon, Defendants' Exhibits AF, AI, AJ, AK, AL, AM, AN, AO, BA, BB, BC, BD, BE and BF were received in evidence.)

The Court: What are we supposed to infer? That these boundaries are historical and that they are long-standing—

Mr. Creighton: Yes, sir.

The Court: Since 1935, at least; and that they have no diabolical significance at all? Is that it?

Mr. Creighton: These maps are offered to show the history of—

The Court: Or, have I overstated it?

Mr. Creighton: I think that's a fair statement, Your Honor.

May we proceed, Your Honor?

The Court: Yes.

[789] *By Mr. Creighton:*

Q. At the recess, Mr. Hedley, we were discussing this Exhibit AE, which is the junior high map for 1956 showing the situation that September and showing changes made since the previous year.

Mr. Hedley, let me show you Plaintiffs' Exhibit 333, which is the Superintendent Oberholtzer's recommendation to the Board of Education on June 20th of 1956 and showing the board action thereon. Did you refer to that portion of the board minutes among others in preparing these maps? A. Yes, sir, I did.

Q. Does that show the board action which changed among other things the optional Smiley-Cole area effective September that year? A. That's right.

Q. And does that Exhibit 333 also show that that proposal was made in January of 1956 along with the proposals shown on this Exhibit AE affecting Hill and Gove and Smiley on the side? A. That's correct, both propo-

sals, at the same time, one effective one time and one the other.

The Court: May I see that?

What's the exhibit number?

The Witness: Exhibit Number AE.

The Court: Do you want this back?

Mr. Creighton: No, Your Honor. I don't need it [790] now.

Q. Mr. Hedley, you can be taking down the junior high maps.

Mr. Creighton: Your Honor the balance of the A series, AH through AO, of course has been received and on two or three of these we would like Mr. Hedley to comment.

The Court: Surely. You go right ahead.

Q. Mr. Hedley, calling your attention to Exhibit AH, does that show the senior high boundaries in 1960? A. Yes, they do.

Q. Were new high schools opened that year? A. Three new senior high schools, George Washington, Thomas Jefferson and Abraham Lincoln, all opened in September, 1960.

Q. Does that show the location of those new schools? A. (Indicating.) George Washington, Jefferson, and Lincoln.

Q. And does it show the areas assigned to those new schools? A. Yes, this area designated—

Q. That is shown by what? By your blue arrows? A. Yes, these arrows here.

Q. And your orange lines indicate the new boundaries

that were established in connection with those schools, does it? [791] A. That's correct.

Q. Very well. Set that aside, please.

The Court: Now, all of this had to go to East and South before? Lincoln had been West, is that right?

The Witness: Yes, sir.

Q. What high schools were directly affected by those openings, Mr. Hedley? A. I expect South was affected by Jefferson and East by Washington. The dotted black lines here indicate the old boundaries between East and South. And when George Washington was opened, this was the boundary established; all of this area fed into Washington. This optional area, C, which was optional between East and Washington. This area in the south district was cut off here and this area went to Thomas Jefferson.

Q. Was that a junior-senior high school at first? A. Yes, sir; this was the old boundary line here between South and East. And the optional area, D, West, Lincoln and South—this area indicated by this orange line is the new Lincoln Senior High.

The Court: Well, South had had a part of that Lincoln?

The Witness: Yes, sir, the south boundary went over into here. This area was optional at that time and now the new boundary is here.

[792] The Court: Thank you very much.

Q. Now, just leave those there, Mr. Hedley. We will just move from one easel to the other as we go.

Exhibit AI shows, doesn't it, junior high boundaries in 1961? A. That's correct.

Q. And all of this series from now on that I have previously mentioned, Mr. Hedley,—these are official maps? A. These are all official maps.

Q. And you have added on the official maps certain legends, have you not? A. Correct.

Q. On this Exhibit AE, your blue lines with the tails marked with an arrow indicate what? A. These areas were annexed to the city during that year and then they were assigned to that particular school, this being Kunsmiller and this being Merrill, and this was the boundary change indicating these two were assigned down here to this district, which was Hill.

Q. All right. And that year, in 1961, the junior high level—how many optional areas were there across town? A. I think we still have—twelve.

Q. Exhibit AJ, Mr. Hedley, shows junior high boundaries in 1962 the following year, do they not? [793] A. That's correct.

Q. And again the same legend that you have shown boundaries—boundary changes and annexations? A. Right.

Q. And this shows a total of how many boundary changes at the junior high level that year? A. We have one here, this would probably be considered one, three, four, five, six, seven, eight and nine.

Q. And broken down by individual areas, even more than that? A. Yes.

Q. You have how many arrows there showing changes? A. These are school assignments, three here; four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen—nineteen.

Q. Nineteen boundary changes at the junior high level in 1962? Did that occur in all parts of town? A. Yes.

Q. And there was one annexation there? A. Right. College View was annexed and assigned to Kunsmiller.

Q. Let's move on to Exhibit AK. AK shows senior high boundaries in 1962, the same year as the previous exhibit, does it not? A. That's correct.

[794] Q. And how many separate boundary changes occurred at the senior high level that year? A. Eight.

Q. And there was one annexation there then? A. Again, College View, which went to Abraham Lincoln.

Q. On the maps, AJ and AK, taken together, show the boundary changes at the secondary level effective in 1962, is that right? A. That's correct.

Q. Let's look at AL.

The Court: These are junior highs in 1965?

The Witness: 1963.

Q. I think, Mr. Hedley, you could move AL over so we can see AM.

[795] Q. I first call your attention to Exhibit AL. That is a junior high map for 1963, is it not? A. That's correct.

Q. Again, it shows annexations and boundary changes since the previous year? A. Right, new annexations, one boundary change.

Q. How many annexations were there? A. There were one, two, four, five, six, seven, eight, this one being small, and nine.

Q. Is that the last one Inspiration Point? A. That's correct.

Q. Now, directing your attention to Exhibit AM, now, this shows junior high boundaries the following year, 1964, does it not? A. That's correct.

Q. And, then, what were the boundary changes that year? A. We had one boundary change down here.

Q. That's between what and what? A. Between Thomas Jefferson and Merrill Junior High. And a boundary change here between Hill and Gove. The optional area to Gove, and a boundary change—you remember this was all optional—was put into three schools, to Cole and to Smiley, to Gove, this part being Gove before and now to Smiley, and this part being Gove before and now to Smiley.

Q. All right. Let's move that aside and show AN, which [796] is the senior high situation for the same year, 1964. A. 1964, that's correct.

Q. And you have the same annexation, of course, that year? A. That's correct.

Q. And how many boundary changes, senior high level, that year? A. This boundary change here, which was this part East and this part was optional before.

Q. You are referring generally to the Ashley district? A. That's right.

Q. And that was put where? A. Into George Washington.

Q. What about the optional area north of City Park, at the senior high level? A. The optional area here was split into two schools, and this part to the west going to Manual and this part on the east going to East. This was a boundary change with these two areas going to East.

Q. Now, following the secondary changes in 1964, Mr. Hedley, were there any optional areas left? A. No optional areas were assigned to definite schools.

Q. At both levels? A. That's correct.

The Court: This is Exhibit—

[797] The Witness: AN.

Q. All right, let's put up AO, please. This is a junior high map for 1965, is it not? A. Correct.

Q. And was there a new school that year? A. John F. Kennedy was new that year.

Q. Is that a junior-senior high school? A. Junior-senior high school.

Q. So that had twelve grades in the area shown? A. That's correct.

Q. And how many annexations were there effective that year? A. There was one, two, three, four—these are small,—five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen.

Q. Fourteen annexations? A. Montbello—

Q. Was there a deannexation? A. Yes, the Fort Logan area was deannexed that year.

Q. All right, Mr. Hedley, let's set these down and get out the B series.

Mr. Hedley, this whole B series, BA through BF, are official maps, are they not? A. That's correct.

Q. And in particular, Exhibit BA shows elementary [798] subdistricts in September of 1959, does it not? A. That's correct.

Q. Did you actually have a map which spoke as of that date? A. No.

Q. What did you work from? A. This was constructed from a 1960 base map.

Q. And did you merely eliminate the changes which were effective that year? A. Yes, we eliminated three new school areas to show the way it was in 1959, September.

Q. Now, move that aside and let's show Exhibit BB alongside. Exhibit BB shows elementary subdistricts in September of 1960, does it not? A. That's correct.

Q. And that's an official map for that year? A. Right.

Q. What have you added to that? A. The three new schools, elementary, opened up that year. This one here, Denison and Barrett and Fallis.

Q. And in orange you show there are new boundaries? A. New boundaries indicated in orange.

Q. Those schools were in all parts of the city, is that right? A. Yes.

[799] Q. Denison being on the— A. Southwest, on the city limits here.

Q. And Fallis being— A. On the east city limits.

Q. Now, referring to Denison, are you familiar with the sites of the schools in the city, Mr. Hedley? A. Yes, sir.

Q. Is it part of your responsibility to be familiar with schools and their sites? A. That's correct.

The Court: Just where is Denison located?

Q. Describe it by street, please. A. Jewell here to the south and Yates on the west side here, and it is a vacant lot to Sheridan on the west, Yates being on the east, Jewell on the south.

Q. Sheridan is the city limits? A. Yes.

The Court: Will this serve the extreme southwest?
The Witness: Southwest area, right here.

Q. And from these two exhibits, Mr. Hedley—

The Court: Where is Traylor?

A. Traylor was not in at that time, sir.

The Court: I mean, where would it be in relation—
Th Witness: It is here.

The Court: I see.

[800] Q. In annexed territory to the west? A. That's correct.

The Court: All right.

Q. What subdistrict was the Denison district carved out of? A. Force and Doull. This part north of the dotted line was in Force. The part south was in Doull.

Q. All right. Were there any changes in optional areas that year, since the previous year? A. The optional area here became part of the Barrett district.

Q. Previously, the portion of the Barrett district on BB beneath the dotted line have been optional? A. Optional between Barrett and Park Hill.

Q. How many other optional areas were there in at that time? A. One, two, three, four—nine.

Q. Nine? A. Yes, sir.

Q. The next year, 1960, how many did you have? A. Nine here. There would be nine here and ten here, because we eliminated "I" here.

Q. It is your testimony that in 1959, in the fall of the year, there were ten optional areas? A. Yes, sir.

[801] Q. And nine the following year? A. Correct.

The Court: There have been before Barrett was built ten, is that correct.

The Witness: That's correct, sir.

Q. Now, please move BB over and show BC. BC shows elementary districts the next year, does it not? A. 1961, that's correct.

Q. And you have shown in the usual form the changes since the previous year? A. That's right.

Q. And annexation? A. That's right.

Q. And annexation, of course, would be the same as shown on the secondary maps, would they not? A. Yes, they are, except they were specially assigned areas, so there were no arrows drawn.

Q. What do you mean by specially assigned area at the elementary level? A. Students living in this area, when it was annexed, were accommodated at the nearest school with available space, transportation provided.

Q. So that unlike at the secondary level, Mr. Hedley, the specially assigned areas will go to a number of different schools? [802] A. That's correct.

Q. And how many boundary changes were there effective in 1961? A. This would be considered three, two different schools.

Q. How many arrows do you have, is my question. A. Sixteen.

Q. In 1961?

The Court: There were sixteen at this place in that year?

The Witness: Yes, sir.

Q. And are they all over town? A. Yes, they are.

Q. And how many optional areas were in existence that year?

The Court: There had been ten the year before?

The Witness: Eleven this year. There were nine in 1960.

The Court: Nine?

The Witness: There were eleven here.

The Court: Two more created?

The Witness: That's correct. Well, actually, there were three, the Ashland-Columbia, Valverde-Barnum, and Lincoln-McKinley.

Q. And you have shown those new optional areas by underlining the legend? [803] A. That's correct, "J" being Ashley-Columbine and "K" being Valverde-Barnum and the Lincoln-McKinley being "L".

Q. So the new optional areas in 1961 you have not shown on the map proper but on the legend, is that right? A. That's correct.

Q. All right, let's go to BD. Exhibit BD shows elementary subdistricts in the fall of 1962, does it not? A. That's correct.

Q. And were there any annexations that year? A. The whole College View annexation, but the school was annexed with the annexation.

Q. The school came with that annexation? A. That's correct.

Q. How many arrows indicating changes do you have in 1962? A. Thirty-two.

Q. Are those all over town? A. Yes, sir.

Q. Were there any new optional areas created that year? A. No, sir.

Q. Optional areas that year are lettered and shown in the legend? A. That's correct, A, B, C.

Q. So that there were three optional areas that year?

The Court: Added to the others?

[804] The Witness: No, total of three.

The Court: Just a total of three?

The Witness: That's correct.

Q. And those three were where, Mr. Hedley? A. A was optional between Harrington and Columbine; B between Park Hill and Stedman; C between McKinley and Lincoln.

Q. All right, and those optional areas are generally in all parts of town? A. Yes, north and south.

Q. All, right, let's move on to BE.

The Court: Where did you say they were, just two in northeast Denver?

The Witness: A, B and C, north and south.

The Court: Okay, go ahead.

Q. Now Exhibit BE shows elementary subdistrict boundaries, September, 1963, does it not? A. That's correct.

The Court: This is BE?

Mr. Creighton: Yes, Your Honor.

The Witness: BE.

Q. And in the legend do you show the optional areas? A. Yes, optional A, B and C again.

Q. Same three from the previous year? A. Same three from the previous year.

[805] Q. Were there annexations that year? A. Yes, this West Bear Valley, Bear Valley Heights, Centennial Estates, or Centennial Acres, this, south and north, and this.

Q. Again, those were assigned to various schools and transportation was used? A. That's correct.

Q. To provide them with the schools? Does that show just one boundary change? A. One boundary change here. It was from Eagleton to Barnum, south of 6th Avenue.

Q. And west of the Platte River? A. That's correct.

Q. All right, the next map is BF. Mr. Hedley, this shows elementary subdistrict boundaries, 1964. A. That's correct.

Q. And do you show in the usual way your boundary changes and the new boundaries? A. That's correct.

Q. Would you please count the number of arrows indicating separate boundary changes? A. Nineteen.

Q. Are you including those in the south part of town? A. Excuse me, 21.

Q. All right, and those changes occurred in the north [806] part of town and the east part of town and the south part of town. A. That's right.

Q. Finally, BF. A. This is BF.

Q. Let me ask you about optional areas, Mr. Hedley. The legend doesn't show optional areas. This is 1964? A. That's correct.

Q. Were optional areas done away with? A. They were all assigned to specific schools.

Q. And the same thing happened at the secondary level that year? A. That's correct.

Q. All right. that's the last of your elementary series.

* * * * *

[840] * * *

GEORGE L. BROWN, JR., a witness called by and on behalf of plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Greiner:

The Court: Please give us your name and address.

The Witness: George L. Brown, Jr., 3451 East 26th Avenue, Denver, Colorado.

By Mr. Greiner:

Q. Mr. Brown, when did you move to Denver? A. June of 1950.

Q. Subsequent to June of 1950 were you employed by The Denver Post? A. I went to work for The Denver Post in June 1950 as a staff writer.

Q. Can you describe what you did in that capacity? A. My first duties as a staff writer for the Post involved a series of surveys and studies of both the minority [841] and the majority communities to make some determinations of racial attitudes; whether or not there was a feeling of racism in the majority communities, and what the minority communities believed about the majority and what sort of attitudes generally there were in the total community.

Q. You wrote a series of articles? A. Yes.

Q. When were those articles published, do you recall? A. First series in 1951; another in 1952, '53, '54, '55, and then skipped a couple of years, in 1957.

Q. Now, in June of 1955 did you assume political office? A. Yes, I was appointed to the House of Representatives in June of 1955.

Q. What area did you represent? A. At large. The total community of Denver.

Q. Then did you subsequently run for election to the House of Representatives? A. No, I ran for election to the State Senate in the primary in September of 1956. And then was successful in the general election to the State Senate in November of 1956, again, elected at large from throughout the city.

Q. Then have you subsequently run in subsequent elections for the Senate? A. I was re-elected at large in 1960;

elected in 1964 from a district of northeast Denver without opposition in [842] either the primary or the general, and re-elected to represent that same general district in 1968, again without opposition.

Q. Now, in the course of your political representation, Senator Brown, have you had occasion to meet with members of the black community? A. Yes, on numerous occasions.

Q. Have there been any major issues which have come to your attention from the black community? A. I think the primary concern throughout my whole political career and also during the time that I was writing for The Denver Post, in the black community was the availability and opportunities for an equal education experience for black youngsters. This has always been in my opinion the primary concern. We had occasions when we talked about housing and about employment, but also the main issue running through it was education.

Q. Now have you had or do you not have children in the Denver Public Schools? A. Yes.

Q. Can you describe where those children went to school? A. My first daughter attended school first at Wyman when we lived at 1870 Vine. We moved to 3120 Steele Street in 1957. My daughter attended a few days at Columbine and then since we lived in an area that was an optional for Columbine and Park Hill, she started being bused to Park Hill. [843] She then attended for a brief period of time school at Whittier and then at Smiley, East High School, and now in college.

The other youngsters, one of them started at Barrett and went there two years and then was transported by bus under the open enrollment to Carson School. The next

youngest attended both Barrett and Carson. And the youngest has always attended Carson.

[844] Q. That was under, first, limited open enrollment? A. First, limited open enrollment, and then under the voluntary open enrollment, and then this year under whatever they call this scheme.

Q. Now did you participate, Senator Brown, in any of the discussions surrounding the proposed boundary changes between Manual and East High Schools in January and February of 1956? A. Yes.

Q. Can you tell us, Senator Brown, what the attitude of the community was toward Manual when first opened in 1958?

Mr. Brega: I am going to object to that as calling for speculation and conclusion of the witness, Your Honor.

The Court: I am inclined to agree. I don't know how he can sum it up in that manner.

Mr. Greiner: Well, Your Honor, I think—

The Court: It is conclusory. He is not really giving his observations. If he wishes to relate any particular conversation for circumstantial value, why, he could do that.

Mr. Greiner: Well, Your Honor, I think that there are two points here. One is that I believe the foundational questions have established that this witness has been intimately involved in knowing and receiving the views of his constituents, even, first of all when he was gainfully [845] employed as a reporter. That was his job, to go out and seek what the community was thinking.

Secondly—

The Court: Does this pertain now to the boundary changes?

Mr. Greiner: Yes, Your Honor.

The Court: Only?

Mr. Greiner: And what we will establish, Your Honor, I think, is a clear exception to the hearsay rule, because what we seek here to establish is a state of mind.

The Court: Oh true, if you have got the conversations, but this is second degree or three degree hearsay, because he is seeking to sum up a community attitude, you know, himself, and give it to us, and it is a time of evidentiary matter that can be absorbed by any lay person. And so I think he ought to give us the details, rather than his own conclusions as to results of his survey.

Mr. Greiner: All right.

Q. Senator Brown, you recall when the new Manual opened in 1953? Did you have any discussions with members of the black community? A. Yes.

Q. Which revealed their attitudes toward the new Manual? A. Yes, a number of discussions with various people, who had at that point great pride in the fact that Manual was—

[846] Mr. Ris: Just a moment, if the Court please, I think the answer is becoming nonresponsive, and he is again drawing generalities as to what the various people may have said. We will object to it on that ground.

The Court: Well, we have had some evidence that there was a great deal of pride in the building

of this new building and hope and aspiration with respect to its becoming a good educational institution. I don't know who gave it now, but I think we did have some.

Mr. Greiner: I think it is also in the exhibit entitled, "The New Manual," Your Honor, which is in evidence.

The Court: So, he may go ahead so far.

A. (Continued) Numerous discussions expressing great pride in Manual and certainly the expectations of what it would become as an educational institution.

Q. What were the factors mentioned to you? A. Factors in regard to the pride and the reason why?

Q. Yes. A. A feeling that it was, one, a new facility, that it would encourage faculty persons from throughout the majority community to want to teach there. It would give the school administration an opportunity to better furnish a quality curricula. It would give an opportunity for the school administration to help build within the youngsters attending that school a kind of pride that hadn't always been there in [847] the past.

Q. Now, by January of 1956, Senator, had you had any further conversations regarding the new Manual, and, if so, what did they indicate?

Mr. Ris: Object.

Mr. Brega: Object.

The Court: Sustained; you are going to have to get more definite than that if it is going to be of any value to us.

George L. Brown Jr.—for Plaintiffs—Direct

Q. Senator Brown, did you in fact have subsequent conversations regarding the community's attitude toward Manual? A. Yes, in January of 1956, there were a series of meetings in the black community, where persons were expressing concern that Manual was not living up to what had been expected, that in fact the school administration by the drawing of boundary lines was tending to make Manual exactly what it wasn't hoped that it would be. We met in a series—like I say, a series of sessions. On January 10, 1956, a group of state representatives met, after having learned that the school administration had planned some boundary lines for Manual and East and Smiley and Cole, which is our opinion would have two effects of segregation. It would affect the—it would segregate the black students in Cole and Manual, segregate the white students in East and Smiley.

Q. Did the representatives—

[848] Mr. Brega: Just a minute. Your Honor, I move the answer be stricken on the objection previously made that it is a conclusion of the witness and speculation.

The Court: Overruled.

Q. Did those representatives subsequently write a letter?

The Court: You mean state representatives?

The Witness: Yes, sir.

Q. Subsequently write a letter addressed to the Denver School Board, Senator Brown? A. Yes, sir.

Q. I hand you what has been marked for identification as Exhibit 338-A, and ask you if you can identify that as

the letter written. A. Yes, that is the letter that was written by us and signed by us, addressed to Mr. Isadore Samuels, who was then president of the Denver School Board.

Mr. Greiner: Your Honor, we offer Exhibit 338-A.

The Court: Have counsel seen it?

Mr. Greiner: Yes.

Mr. Ris: We agree to the authenticity of that.

The Court: May I see it, please? Do you object to it being received in evidence?

Mr. Ris: No, sir.

The Court: All right, it will be received.

[849] (Whereupon, Plaintiffs Exhibit 338-A was received in evidence.)

Q. Senator, there is in evidence Exhibit 338. Was Exhibit 338 written is response to Exhibit 338-A? A. Yes, it was, and addressed to me, signed by Mr. Frank A. Traylor, who was vice-president of the Board of Education at that point, who indicated that he was responding to the communication from us because of the illness of Mr. Samuels.

Q. Now, you mentioned a concern about this proposed boundary change, Senator Brown. What were the factors which you were considering personally? Were you making any comparison at all, for example, between Manual and East?

The Court: Are you going to introduce this other one?

Mr. Greiner: It is in evidence, Your Honor.

The Court: Oh, is it ?

A. I am sorry?

Mr. Greiner: Read the question, please.

Mr. Ris: It is a leading question. Could we have it rephrased, please?

Q. Senator Brown, what factors were you considering, if any, with respect to the comparisons between Manual and East? A. Yes, we have looked at the fact that Manual had not [850] received the more experienced teachers, as had been hoped. The quality of the curricula had not improved in comparison with other high schools. The dropout rate was still high and declining. Even the name had its negative connotations, and there was a strong feeling in the black community that Manual was being regarded by the Administration as a substandard secondary type school, that the quality schools were in the other parts of the city, and that comparison seemed to stand out very markedly when you looked at Manual and East.

[851] Q. Now, what then was the concern, Senator Brown, about a proposed boundary change between Manual and East? A. We had looked at Manual when it was called new Manual and had watched the drawing of the new boundary line about a block east of the school and had recognized that this took into no consideration the fact that Manual was not going to be filled to capacity when East High School to the east and south was already at a hundred percent capacity. It said a lot of negative things to the black community. It said here, that that was an effort to make sure that Manual remained the black

school and that as few as possible numbers of black children would be admitted to East.

Q. Now, that was in 1953; is that correct? A. 1956.

Q. When Manual opened— A. 1953, yes, when they established the boundary. Then in 1956 the new drawing of the boundaries was only a few blocks still to the east, obviously with no regard to the very factors that Mr. Traylor had listed in his letter as to the reasons for the drawing of the boundaries.

Q. Do you recall what the north-south street was at which the eastern boundary was proposed? A. York.

Q. Do you recall whether or not, Senator Brown, there was any dividing line at that time between the white and black [852] communities? A. Yes, and this gave us added support to our feeling that it was an obvious effort to keep Manual as a black school.

Q. Where was that dividing line? A. About York Street. There were very few families east of York at that period of time, although it was an indication that the black community was moving that way and indications to us that the line would be expanded as the black community filled in those neighborhoods.

Q. Now, where were you living at the time of the proposed boundary change? A. In 1956 I was living at 1870 Vine.

Q. And that is an area southwest of City Park? A. Yes, southwest of City Park.

Q. Was that an optional area, do you recall? A. Yes, and much to my concern, so much that I expressed it to Dr. Oberholtzer—

The Court: Optional in what respect?

Q. Between what schools? A. Optional, that youngsters could go either to East or Manual High Schools.

And, I expressed a concern because in that same optional area which was drawn in as an old box, the only two black elected officials in Denver lived there. And it said to us that they were saying to the black community, "We're [853] going to fix it so that your elected officials can escape from what we consider obviously a bad—"

Q. Who was the other elected official? A. Mr. Elvin Caldwell who lived at 21st and Race; city councilman.

Q. Now, did you attend any meetings, Senator Brown, first of all, in the black community— A. Yes.

Q. —where alternatives were discussed as to the then proposed boundary change? A. Yes, a series of meetings in the black community in early January. I attended a meeting at the Glenarm YMCA where we invited members of the School Board and School Administration to attend to give us first hand the kinds of things that Mr. Traylor later said in his letter and also to allow us to present the alternates that Mr. Lorenzo Traylor and Mr. Lajean Clark had drawn up with quite a bit of work and time.

Q. Do you recall what those alternate proposals were? A. Yes, it was to extend Manual east, north of City Park.

Q. That would be east of York Street? A. Yes, over to Colorado Boulevard, at least, and maybe even further. The logic was that the bus lines that ran from that direction all went down west right past Manual. The only bus connections to East at that period of time were [854] either you went to Colorado or you walked over to 22nd or you went to York and you transferred in both cases. It just seemed logical that the flow of traffic and the movement of people would have been from that direction into Manual. It was also shorter than over to East. The ob-

vious reason for not drawing it was that the families that lived in that area then were predominantly white.

Q. What, if anything, was discussed concerning the capacity utilization of the two schools? A. It was pointed out that even in 1956 Manual still was under capacity and East was over, and that the optional areas and everything did little or nothing to improve that situation. Yet, in his letter—the letter from Mr. Traylor—he had indicated that the lines were drawn because of the overcrowding of some schools and the availability of room in others. And this line didn't fit either requirement.

Q. Now, do you recall then a meeting that was held in the cafeteria at Manual High School? A. Yes.

Q. When did that take place? Can you place it in point of time, for example, with reference to Exhibit 338-A or 338? A. Around—I'll have to think through this now. It was prior to—No, it was after the letter. After the letter.

Q. After you had written the letter A. Yes.

[855] Q. Was it after you had received the response which is 338-A? A. Yes.

Q. Was it still in the month of January, do you recall? A. Yes, still in the month of January, and the Board had not taken any action in one way or the other in regard to the boundary lines.

Q. Now, there was a Board meeting on January 18th of 1956, as I recall. Is it your recollection that it was prior to that meeting? A. Yes.

Q. Now, do you recall who was present at that meeting? From the School Administration? A. Mr. Peter Holms. I don't remember whether it's doctor or mister Henderman; Dr. Oberholtzer; Frank Traylor. I don't remember

what other school administration people were—I think there were some.

Q. Was Lorenzo Traylor at that meeting? A. Lorenzo Traylor and Lajean Clark, both with very elaborate sets of maps that made a lot of sense.

Q. Were you present at that meeting? A. Yes.

Q. Can you describe for us what occurred at the meeting? First of all, how many persons were in attendance? A. Oh, several hundred. I can't remember the exact [856] figure anywhere close. The cafeteria was filled with persons from the black community who were obviously concerned and felt that the school ought to do more consideration before adopting the proposal that had been given to the School Board by the school administration.

Q. Did the members of the school administration explain the reasons behind the proposed change? A. Yes.

Q. What did they say, do you recall? A. They used the same kind of reasoning about long-term considerations when drawing their plan; that they had to look to the future; they had to look to what the future population and the student population and the like, and where they might be able to place schools in order to come up with their lines. And it completely wiped out any thought about looking at the situation as it then was and then—and trying to do some things that made a lot of sence for the youngsters who were in school right then.

Q. Well, in the long term as they described it, did they project that Manual would be filled to capacity? A. I'm sorry. I don't recall.

Q. Anything else that you recall from that particular meeting? A. A number of us went from there with the strong belief that once again the school administration

and the School Board [857] had demonstrated beyond doubt that there was little concern about drawing any kind of pattern then or in the future that would help create an integrated school situation in Denver.

Q. Now, did you subsequently then attend a meeting at the Administration Building? A. Yes.

Q. When did that meeting take place? A. A few days after the one at Manual. I met with some of the same people and I think Lois Heath was also at that one.

Q. She was a member of the School Board? A. A member of the School Board. And, once again, we went away with the same feeling; that we were wasting our time and that some people would be a lot happier if we just decided to give up and not come back. It was also during that series of meetings—a clear indication to me that the School Board wasn't about to do anything until as late as possible in that school year, recognizing that whatever the community could muster by way of disagreement with what they would do, would probably die out over the summer months since the School Board went into recess and wouldn't meet again until sometime in September.

Q. Now, during this same period of time—and by that I mean January, February, March of 1956—were there meetings taking place in the black community? [858] A. Throughout the black community, and as more and more—

Q. Did you attend those meetings? A. A number of them. As more and more people because aware of what was happening and aware that their dreams for Manual certainly were not going to be realized, and I think a lot of us reached the same position that I had, that selfishly we had to come up with a plan that would bring white

youngsters into Cole and into Manual or else there would never be a quality education program there. We could talk about it and work for it but until there was some incentive for the School Board wanting to do something about it and put money in facilities and whatever else is necessary—needed for a quality program, that they would never do it unless we were able to mix the youngsters of all colors.

Q. Why did you equate the presence of white youngsters with quality education? A. At that stage of the game I had not had the benefit of having attended several conferences where I later learned from experts in the field. But, at that stage it was strictly selfish. I felt that if black youngsters were to get a full opportunity for an equal educational experience, that the only way they would get it would be that there would be white youngsters there who would be taken care of and as a result of them being taken care of the black youngsters would also have the same opportunity of being taken care of.

[859] Q. Now, during that same period of time, Senator Brown, were you aware of any change in attitude with respect to the realtors who were selling property in that area? A. Yes.

Q. Did you receive a telephone call? A. A number of telephone calls.

Mr. Brega: Just a minute. I am going to make a preliminary objection, Your Honor. I believe the question itself calls for a hearsay answer.

The Court: Well, he said he received a phone call. We can go on and check it out a little further at least, and see what he's getting at.

Q. You said you received a series of telephone calls? A. Yes, we lived at 1870 Vine. We were the first black family to move into that neighborhood. And shortly after we moved in we started receiving calls from realtors, people from real estate agencies indicating to us—

Mr. Brega: Just a moment, Your Honor. I'll object to any conversation on the other end of the telephone call.

The Court: What do you propose to show?

Mr. Greiner: I propose to show, Your Honor, that at the time these boundary changes were being discussed in the community, that the real estate activity was such that realtors were calling people living in that neighborhood, including Senator Brown, who they didn't happen to know was black, and [860] encouraging them to leave the neighborhood because it was going to be the next target of Negro migration.

Mr. Brega: Well, there is additional objection besides being hearsay—you can't presume that upon the School Board.

The Court: Quite true.

Mr. Greiner: This is simply to give the background—

The Court: I don't believe they are trying to do that.

Are you?

Mr. Greiner: No, Your Honor. Simply—I think it might help the Court in understanding what was going on at that time, what the total picture was.

Mr. Ris: May we join our objection with the intervenors. This is wholly irrelevant.

The Court: Sustained. I feel it is somewhat remote, quite apart from its general and conspiracy quality. And I think also that the evidence is fairly well established that this migration occurred, and when it occurred, and I think it was very apparent that—to everyone in the community, what was going to happen. So I don't think—I don't see that it needs any—

Mr. Greiner: We only offer it, Your Honor, for the point of proximity and for the inference of there in fact being a causal relationship between what the School Board [861] does vis-a-vis boundaries and how that affects the affected community.

The Court: Well, I think—he could testify to what was actually occurring in this community that he has just described, what he saw. I see no reason in objecting to that.

Q. Senator Brown, what in fact was happening in this neighborhood? First of all, I believe you have said you were the first Negro family in that area? A. Yes.

Q. And what happened subsequent to the boundary change? A. More black families moved in. The population at Wyman, which was the elementary school in that area, began to change. The boundary lines in fact were later expanded to put that area into Cole and Manual, even more so. Until finally—

The Court: I think he was really directing his attention to Vine Street, for example,—Why did the white residents start moving out.

The Witness: Yes.

[862] Q. Between Vine and York, essentially? A. Yes.

Q. Then, as I understand it, Senator, in June of 1956, the boundary change was passed, is that correct? A. Yes.

Q. Did you have any meetings with members of the black community to discuss the fact of the change? A. Yes, and, like I say, it was during a period of great frustration and concern, even more so, if that were possible, that the school board had demonstrated again that there was no concern for our feelings or for our desires for integration.

The Court: Let me ask you this, in 1956, prior to January of '56, you had this optional area with the East High-Manual area?

A. Yes, sir.

The Court: What was the effect—and that was eliminated, I assume, by the school board?

Mr. Greiner: Your Honor, I think it might help if he were to identify on Exhibit 204 the optional area where he lived and which he had reference to.

The Court: Well, what I was interested in knowing was whether the elimination of this optional area affected the composition of Manual in any degree.

Mr. Greiner: Well, I think—there are two [863] optional areas, Your Honor.

The Court: Could I ask him, please, about this one particularly?

The Witness: What was the question, Your Honor.

The Court: Whether the elimination of this optional area between East and Manual affected the composition of Manual at all?

The Witness: It merely made it that much more black and it—like I said earlier, the interesting thing is they moved from this one to wipe out this area in here, which had become predominantly black, as optional, so that those youngsters went to Manual. They somehow left this little square—

The Court: Where is that now?

The Witness: And that's the square that goes between 21st, York—and it goes over to Franklin, and there were white families still living in that little square, plus, as I said, the only two black elected officials lived in that square, and—

The Court: That continued to be optional?

The Witness: That continued to be optional, but the other areas that had been wiped out as optional now became predominantly black and now became all Manual, rather than as before optional between the two schools.

The Court: Well, what it resulted in was that [864] certain students who had been going to East had to go to Manual?

The Witness: Some black students who had been going to East now had to go to Manual, and the result was that it still maintained the option for those youngsters who lived north of City Park, who were predominantly white.

The Court: But none of them attended Manual?

The Witness: None of them had attended Manual before. It just gave them the same opportunity.

Q. The optional area, Senator Brown—

The Court: Well, you are not saying that the elimination of the optional area had any significant

effect as far as segregation is concerned? It just was a demonstrated attitude?

The Witness: Demonstrated an attitude and, yes, it did further segregate youngsters, because the youngsters who lived in the area optional before could have gone to East and had a more integrated situation. Now they had to go to Manual, which was not integrated to any degree at all.

The Court: All right, go ahead.

Q. Did you subsequently move from your Vine Street address? A. Yes, in about 1957, we moved to 3120 Steele.

Q. Do you recall what elementary school subdistrict that was in? [865] A. We lived in the optional area for Columbine and Park Hill. The line for Columbine was down the middle of Steele Street and the area east of the line was optional between the two elementary schools.

The Court: Between Columbine and what other?

The Witness: Park Hill.

The Court: Park Hill.

Q. Do you recall what the racial composition of your neighborhood was at that time on Steele Street? A. On Steele Street it was integrated. We were the first black family in the 3100 block. There were black families on the west side of Steele. There were black families living in other areas around us, but as far as our own block, we were the first family into that particular block, and the area was at that point still a number of white families.

I can't tell which was more predominant, but there were still a number of white families with children living in that area.

Q. Do you recall what the racial composition of the neighborhood was immediately east of Steele, say, between Steele and Colorado Boulevard? A. Predominantly white.

Q. Now, this then was an optional area between Park Hill and Columbine? [866] A. Yes.

Q. And do you recall what the racial composition of Columbine was in 1958? A. I don't have those figures, I am sorry.

Q. Do you recall what the racial composition of Park Hill was? A. I can tell—I can say that both schools—that Columbine was predominantly black and Park Hill predominantly white. I don't have the percentages.

Q. And did you have a daughter who was then attending elementary school? A. Yes.

Q. And what elementary school did she attend? A. She went a few days to Columbine and then was bused to Park Hill.

Q. How long did that busing continue, do you recall? A. I suppose until Barrett was constructed and opened. I am not sure.

Q. And that was in 1960? A. Yes.

Q. And then she was assigned to what school? A. To Barrett.

Q. Now, Senator, were there any discussions in the black community concerning the location of the new elementary school which ultimately became Barrett? [867] A. Yes, a number of discussions, because the location—

Q. Pardon me, but when did these first begin to take place? A. In 1959 when we first learned of the school's plans to build Barrett and possibly build a junior high just north of Barrett.

Q. And this was at what location? A. Barrett at 29th and Jackson to Colorado, and the junior high was proposed over on a section of land that was closest to 32nd and Colorado.

Q. All right. What was discussed at these meetings concerning Barrett? A. The size of Barrett indicated, and it was smaller than other elementary schools that were being put up at that time, the size indicated to us that Barrett was going to be predominantly white from the day it opened.

Q. Predominantly white? A. I mean black. I am sorry. From the day it opened. Its eastern property line became its boundary line, and that was Colorado Boulevard. The area that was proposed for it and finally became its area was predominantly black. It was just obvious from the beginning that it was to be another black elementary school and that there would be little or no effort made to draw a line that would draw from its enrollment of white students who lived on the other side of [868] Colorado Boulevard.

Q. That would be on the east side? A. East side of Colorado Boulevard.

Q. Were these concerns made known, Senator, to the school administration? A. Yes, a number of times.

Q. How? A. The meetings with Dr. Oberholtzer, those persons on the staff who had charge of drawing boundary lines, with members of the school board.

Q. Do you have any particular recollection of any meetings which you personally participated in? A. Yes, one in the basement of Lajean Clark.

Q. Was there a representative of the school board there? A. I don't remember.

George L. Brown Jr.—for Plaintiffs—Direct

Q. Do you recall attending any meetings of the Board of Education? A. Yes, a number of meetings during that period.

Q. Was Barrett a subject of discussion in those meetings? A. Barrett was a matter of discussion and usually Mr. Clark very eloquently pointed out all our feelings about what was being planned.

Q. What was the response of the board?

[869] Mr. Ris: Do you have some idea—we are talking now about a two-year period, and we would object unless there is some identification of the period.

Q. Can you identify approximately when these meetings took place? A. Oh, in the fall of '59.

Q. Do you recall how long the subject of Barrett was under consideration by the school board? A. I don't.

Q. I am sorry, I believe you were interrupted, Senator. You were describing what the administration's response at these school board meetings. A. The response was that they couldn't go across Colorado Boulevard because it was a busy thoroughfare. The response was that they had to look at the immediate situation and they had to draw lines to take care of that immediate situation, and, therefore, Barrett was being established and built where it was to handle the immediate situation, which was a complete reversal from what we had been told back in 1956 when they were drawing boundary lines and considering the schools, because at that stage they were telling us that everything had to be a long-range view and that they had to look to the future and it was just—well, as far as we were concerned, a lie, and once again a

demonstration that there was no concern for the real problem.

[870] Q. Did you say, Senator, that the question of Colorado Boulevard as the boundary line was discussed? A. Yes, it was.

Q. And what alternate or alternative, if any, was suggested by the black community at these board meetings with respect to where Barrett's boundary line was to be established? A. Well, first of all, we questioned whether or not Barrett should be built there at all, and then we said, "If this is the case and you have got the land purchased and plans under way, then you should draw the boundary lines of the school on purpose to make it an integrated school on opening day." This was not done.

Q. What would that have required in the way of eastern boundary line for Barrett? A. Some areas across Colorado Boulevard, to the east.

Q. Do you recall, Senator Brown, when the school board published for the first time comparative data on achievement levels in the various Denver Public Schools? A. Yes, I do.

Q. Where there any discussions in the black community concerning the reported achievement levels in the black schools? A. Very much, because the—for the first time, it showed that we had been saying and what we knew would—in fact, we didn't need studies to tell us—is that the [871] black schools were not of the same quality as the white schools, that the teaching, the facilities, the whole ball of wax just wasn't up to par when compared with what was happening in other parts of the city.

Q. Now, do you also recall, Senator, the fact that in about 1964 the school administration began placing mobile units in the schools at Northeast Denver? A. Yes.

Q. Did you participate in any discussions concerning the placement of these mobile units? A. Yes.

Q. When did these discussions take place? A. I think the first mobile units were proposed in March of '64 or were put up in March of '64. At that stage there were none in Northeast Denver. Plans were revealed early that spring about putting some mobile units in Northeast Denver, starting in September, and I think in September of '64 there were roughly—I think there were about twelve throughout the city and eight of them were then in Northeast Denver. This showed us that the school administration was doing its darndest to make sure that space was made available for black youngsters in Northeast Denver, rather than using transportation or what have you as they were using in other parts of the city to take care of youngsters who were already overcrowding facilities or facilities where there were no [872] facilities. At that stage, the black community was reaching that position where we felt that maybe we ought to possibly go along with things like this.

Q. Things like what? A. Efforts to try to improve the number of spaces in the community, once again holding out the hope that with these there would come the other things that go for quality, that maybe we wouldn't have integration because that appeared to be a losing fight, but that we could come up with enough good services, good facilities, good teachers, do away with the teachers that were expressing feelings of serving their time in the Northeast community, that we could do something about the dropout rate, we could do something about bettering the achievement test scores and the like, and certainly hoping to do something about the environment in those

schools, which at that stage was very poor, for a youngster wanting to achieve and wanting to grow in maturity.

Q. Senator, at that time was this feeling in the black community which you have just described uniformly held? A. What do you mean by uniformly? You will have to define that.

Q. Were there any other views in the black community concerning these mobile units? A. Yes, there were obviously people in the community still holding out for integration, still hoping that the [873] fact that there was good faith and nobody was saying that mobile units were a good substituted for good adequate classroom space, but if we didn't get the mobile units maybe the school administration and school board would be forced to do the kind of things which would move those youngsters into situations which would then automatically achieve a better integration in the total system.

Q. What kind of alternates then were those people seeking? A. Transportation, obviously, as a means, and I think as probably the only means—well, not the only, because we were also then talking about some redrawing of boundary lines, which would also have the same effect between schools that were on the fringes of the black community, and in those two strips, hoping to bring in effect more integration.

Q. Now, you will recall also, Senator, that the policy of limited open enrollment was implemented in 1964. A. Yes.

Q. Now, do you recall any discussions in which you participated concerning the community's reaction to limited open enrollment?

Mr. Bis: If the Court please, we are going to object to this. He has already indicated on this

other matter that there were varying opinions and various thinking by the community, and I think the Court can even take judicial notice [874] of that, and unless we get into the various categories of opinion held by the community, I don't think it is proper or right for this man to attempt to say that there was one expression or one feeling within the community that applied to everything there. It just isn't the facts of life.

Mr. Greiner: Well, Your Honor, I believe that would be an appropriate subject for cross-examination, if counsel thinks there was a division in the Community.

The Court: I think it is pretty difficult for him to just generally paint a picture of what the reaction was. It puts them at a disadvantage in terms of cross-examination.

I would suppose that only a few really saw the significance of it, anyhow, and perhaps analyzed it to a degree that they saw some infirmities and limitations. I mean, I just don't see where it has much probative value.

If he could describe what he observed, what he saw, what the system undertook to do and what it failed to do, he could do that as an observer.

I think the objection is it is an effort to psychoanalyze the community at any particular time, and say, "Well, this was their attitude," you know. Who can do this?

And it is not competent evidence.

Mr. Greiner: All right.

The Court: And in this kind of a case, I think [875] there should be some liberality about receiving it. You know, I don't think we ought to have a

strict adherence to the Rules of Evidence and I have indicated that, but it is kind of difficult to justify receiving evidence which is of this type.

Mr. Greiner: Fine. We can certainly take that route, Your Honor.

The Court: One witness says, "Well, this is the community attitude." I would suppose that, if it is like many other community attitudes, and I'm not referring to the black community, the vast majority of the people don't have any attitude at all. They just kind of—until it becomes more acute and starts hurting them, they just are kind of—you do have the vocal minority. They have viewpoints, because they are interested. That's about how it works ordinarily. I don't know. I would suppose that is about the same here, maybe.

Q. Senator, did you have occasion to observe after limited open enrollment was implemented, first of all, what was happening with respect to Negro participation in the limited open enrollment program? For example, did you yourself participate in it? A. Yes, the limited open enrollment started in 1964, at about the same time that the school board eliminated all optional areas. It then became a vehicle for allowing two [876] things to happen, neither of which called for or had anything to do with integration.

Mr. Brega: I am going to object to this, Your Honor. There hasn't been any foundation laid that he has any knowledge other than his own particular case. If he is going to try to summarize—

The Court: He has been making surveys all these years. That's how I think he can describe what he

saw, and he has been vitally interested in it. He is a community leader. I don't see why he can't tell what he observed.

The objection will be overruled. Go ahead.

Mr. Ris: May I join in that objection and also point out to the Court that his own testimony was that his last survey was 1957, and this is some seven years later?

The Court: Well, he didn't say he retired from interest in it at that point? I didn't notice that he did.

Anyway, we will note your objection. Go ahead.

A. (Continued) Still remaining a member of the black community in 1964 and still an elected official, at that stage still a writer for the Denver Post, I saw that many white people were using limited open enrollment as a vehicle of escape. They may then have lived in a district or a neighborhood where there was a predominantly minority school, but they could use limited open enrollment to transport their youngster to a school far removed from that locality.

[877] It also had the effect among black families in that limited open enrollment, since the student had to furnish his own transportation, was restricted to those parents who could afford to send their youngsters, and this meant that if black families were to participate they had to fall into that middle income, more affluent category. The youngsters from the poorer families were then forced to remain at the all-black school, so, in effect, this further diluted the population or the enrollment of the black school, in that you then not only had youngsters being segregated by color but also for a large degree by economics, and it, in my opinion and obviously from the results, showed that those schools were that

much worse off than they had been before limited open enrollment was started.

[878] Q. Now, did you also have occasion—You may recall, Senator Brown, that the program of voluntary open enrollment was instituted, I believe it was in January, 1968. Did you have any occasion to observe the operation of the voluntary open enrollment program? A. Yes. I had had an opportunity in 1967 to attend a race and education conference in Washington, D.C., sponsored by the U.S. Civil Rights Commission, and talked with school representatives from other cities that had started voluntary open enrollment plans and had listened to how their administrations had done positive kinds of things in working with the families in the minority areas; working with the families at the receiving schools; working with teachers at the receiving schools; working with the students at the receiving schools; counseling and the like. None of this was really done in Denver.

There was no encouragement. In fact, a number of parents were counseled against taking part in the voluntary open enrollment—

Mr. Brega: I'm going to object to that and move that it be stricken unless he was present or can show some basis for having this knowledge other than hearsay himself.

The Court: He said he was there, didn't he?

The Witness: Yes, parents were talking to me at this stage.

[879] Mr. Brega: That's what I object to, Your Honor. Unless he was there—

The Court: What is this leading to? That's the important consideration, I suppose.

Mr. Greiner: I think the question, Your Honor, really goes simply to the administration's support or lack of support for its own program of voluntary open enrollment; what the administration did and did not do with respect to the implementation of voluntary open enrollment, and my next question would bring out that the witness—

The Court: Where did he get the information? From what he saw?

Mr. Greiner: Well, the information on the possible program came from this conference which the witness has described which took place in Washington.

The Court: True.

Mr. Greiner: My next question will establish that these ideas were then presented to the school board.

The Court: All right. Go ahead.

Q. Have you finished describing, Senator, the types of supportive programs which you learned about in the Washington, D.C. conference? A. With the exception of one other. We were told that where those schools had community relations divisions, those divisions were strengthened; the persons working in those [880] divisions were given more authority to move into schools and to help in difficult decisions.

Q. All right now. Subsequent to your return from Washington—the Washington conference, Senator, did you have occasion to discuss what you had learned at the conference with represenatives of the school board? A. Yes.

Q. Can you identify for us when that happened? A. The spring—early in 1968. Mrs. Noel was there. Fred Thomas was there. And we discussed with—I can't remember exactly who all took part in all the discussions but I had

some discussions with Dr. Gilberts. I had one discussion with Howard Johnson. I was present when Mr. Thomas made some remarks before the school board. I'm not sure of the date of that.

Q. Would that also have been early in 1968? A. Yes, I'm sure it was.

Q. Well, in the course of these discussions, were the supportive programs which you have described, described to the school board? A. Yes. In fact, I brought back with me all the papers that had been presented there at that conference and I turned them over to members of the school board; asked that they read through them, and return them to me when they were finished. I know Dr. Amesse read them all. I don't [881] know who else on the school board took advantage of the fact that the papers were available and that they could have read them.

Q. Well, what was the board's response, if any, to your suggestions? A. There was no—nothing that I can testify to that was really done in that positive fashion to make this program a value—voluntary open enrollment work for integration. There were— In fact, I think the main thing is, it wasn't so much as what was done as what was not done at that stage.

Q. And then subsequent to the implementation of voluntary open enrollment, Senator, do you recall the circumstances surrounding the passage of Resolution 1520, 1524 and 1533, starting first with the passage of the Noel resolution? A. Yes.

Q. Now, did you have occasion to discuss with members of the black community the resolutions both—well, first, when they were being proposed? A. Yes.

Q. And what was the nature of these discussions? A. Some of the black community expressed great desire to give

the school administration one more chance at integration. There were others in the black community who had already fallen off of that wagon of reason and had [882] decided that there was no hope. But during that stage of the game they took the position that they would say nothing, hoping to give Mrs. Noel and members of the school board who felt likewise an opportunity to maybe get a positive program going.

Q. Now, were these the same attitudes reflected, if you know, Senator Brown, with respect to the school board election which followed the passage of these resolutions? A. Yes, the black community felt that two candidates were running in support of integration and decided that these would be the two candidates that they would support and endorse. Again, that faction of the black community that had given up on integration decided to remain silent, to give some support but not to do things that would cause the other side to have any kind of incidents or the like that they could use to first push their position. The election results showed overwhelmingly that the black community wanted integration because those two candidates carried very heavily in Northeast Denver.

Q. What then did you observe as the effect of the results of that election? A. For the first time in my residence in Denver, the black community responded more as a unit than ever before, feeling that, if there was to be anything done for their youngsters, they had better get out and make sure it [883] was done. For that vast number of people that Your Honor talked about earlier who fit into that category of apathy with little or no concern, began to come out in the black community and to stand together, and there were several thrusts then that were started: first, there were black citizens who felt that they had to

do something to demonstrate to the rest of Denver what they could have had had they voted for integration and transportation and whatever else was needed for it, and started putting together hopefully plans for what they called a free school, a school that could demonstrate what could be accomplished. The advantages of an integrated situation. Then there were those who felt that this took care of—and by the way, there were people working in all areas, too, then there were those who felt that this took care of only some of the youngsters, that the bulk of the black youngsters were going to be put into the neighborhood school situation There were going to be black neighborhood schools and that "we should do all we could to make sure that the facilities were at the toppest possible grade" That the teachers were the best possible teachers; that black administrators were used to the utmost in Northeast Denver, hoping to get as much as possible out of integrated—I mean out of neighborhood black schools

Then there was still a third thrust of those [884] citizens who felt that "Okay, you can go your way on those other two routes, but the only way that we can be assured of getting those things in our schools is outside the established system of a school board and a school administration, completely separated from the community" And they started working, hoping to bring about community control at those schools where there would be people elected to the school board in those vicinities There would be better utilization of parents in controlling what happened to their youngsters.

Then there was still a fourth thrust of those persons who said, "To heck with the whole system; to heck with their school building; the only answer for many youngsters today who are already forced out of the system is that we come up and create something that is not integrated; that is black—

that is black pride only." And these were the store front type operations.

In all cases, in all four cases, integration was not the outstanding factor anymore in the black community. In all cases they were hoping to build on a feeling of black pride and to instill a sense of wanting to achieve in black youngsters.

Q. After the election, Senator, can you say whether or not there remained from your observations and from your description of these four movements, did there remain any [885] longer an attitude in favor of integration? A. A very small part. I think the black community—those who doubted the existence in Denver of white racism no longer had such doubts. Those who felt, however, again the same feeling that a number of us had had many years ago, that the only way that those youngsters were going to get it was to be in a situation where there were white youngsters there, too, so that as an indirect benefit they could get it because it was given to the white youngsters. And then those that were holding out for integration and still saying that's the only way possible.

Q. Well then, Senator, you have been describing in your testimony a period which began in the early '50s and really ended in March or April of 1969. During that period of time do you recall any gestures by the school administration which in your mind demonstrated the administration's concern for the equal educational opportunities for minority children? A. Numerous indications of concern for white youngsters. I frankly cannot honestly point to any cases where the same concern was given to youngsters who were black or brown. No, I can't, not really.

Q. What about the three resolutions which were passed? A. Passed under duress; passed only after the black com-

munity, with a number of good white friends, standing and [886] demanding that noses be counted; passed even knowing that some members of that school board who supported it were going to probably suffer when they came up for reelection, as they did; passed at a time when there were obvious efforts being made to see what they could do even then to circumvent the results. Because, as plans were drawn to implement those resolutions, there were obvious shortcomings in them. For example, we went to Dr. Gilberts and asked that "If you're going to come up with a plan of integration under these resolutions, why not go to some school other than Barrett, because Barrett is located in a middle-class black community? Why, also, not include those youngsters who went to Gilpin?" And in this way, so far as we were concerned, have a more meaningful kind of plan for integration. So that, even though the school board passed the resolutions, I am not able to point to any real strong positive indication to the black community or those of the white community who favored it that this was the—what they really wanted to do.

Q. And then after the board election even those resolutions were rescinded? A. Yes. And it's during that same period of time when we asked about why not Gilpin. It's rather hard for those of us in the black community to accept what is told us as to the reasons why things aren't being done. We were [887] told that Gilpin could not be a part of a plan of integration because the school administration didn't have enough buses to transport those youngsters in a cross-transportation situation. We asked that they immediately go out and look to the private community, look to other areas for the possibility of leasing buses. So, if this was the only reason for not doing it, then maybe by leasing and purchasing and looking at the federal govern-

ment for buses, that maybe they could make the program that much more desirable for us.

We were told in a few days that this wasn't possible; that there just weren't any more buses available in Denver.

I was very interested to read after someone unfortunately burned buses, that they could find 23 in the community to take up for that lack.

Mr. Ris: Objection. This has no significance to this.

The Court: Sustained.

Mr. Greiner: We have no further questions.

* * * * *

[980] * * *

Lois Heath Johnson, called as a witness by the defendants, being first duly sworn, on her oath testified as follows:

The Court: Take the witness chair, please, and please state your name and address.

The Witness: Lois Heath Johnson, 1955 Glencoe.

The Court: You may proceed.

Mr. Ris: Thank you, sir.

Direct Examination by Mr. Ris:

Q. Mrs. Johnson, we have to establish a few things for the record that we can see. You are the Anglo or white race, are you not? [981] A. Yes.

Q. And do you have any objection to telling us how old you are, please? A. Sixty-four.

Q. Prior to being known as Mrs. Lois Heath Johnson, were you known as Mrs. Lois Heath? A. Yes.

Q. Under that name, were you a member of the Board of Education, School District No. 1, Denver, Colorado? A. I was.

Q. Did you go to school as a youngster in Denver? A. Yes.

Q. What school did you go to? A. Well, I went to Broadway Latina School, which has long been gone, and I went to Thoren Gove Junior High School and South Denver High School. I graduated from there.

Q. You graduated from South High? A. Yes.

Q. Did you have a college education? A. I went to the University of Denver and graduated there.

Q. In what year, with what degree? A. 1927 with a A.B.

Q. What was your major and what were your minors? A. I had a double major, one in sociology and one in [982] English. History was a minor.

Q. Following your graduation, were you employed? A. At the Colorado General Hospital.

Q. What did you do at Colorado General? A. I was a medical social worker.

Q. Over what period of time? A. Approximately three years.

Q. Could you outline your history since then as to what you have done outside of the home? A. Well, I left Colorado General Hospital upon my marriage and when I had a family I was not a full-time worker at any time, but I did volunteer social work straight from that time and through World War II. During World War II I was at American Red Cross in charge of the volunteers in what was then called The Home Service Department.

Q. Is that the Denver Chapter of the Red Cross? A. The Denver Chapter. Later it became the Metropolitan

Chapter and I was involved with the organization of the total volunteer group there. I did volunteer work at Catholic Charities at one time. After my first husband's death, I went back to work and I became an employee of Head Start in Denver.

Q. What year was that, please? A. That was in 1965, '66, I think.

Q. In what capacity did you serve under or within the [983] Head Start Program? A. Well, I was a social worker and then was assigned as head social worker to the public schools group.

Q. What did you do, very generally, in that position? A. Worked with the supervision of other social workers and in organizing the program for the parent groups.

Q. All right, how did you happen to get into the school board matters, just generally? A. Well, I had been working with Red Cross and as a fund raiser, and in this manner became rather well known, I suppose, in the community, and I had been active civically, and a group of people asked me if I would run. They called it a citizens' committee at that time.

Q. Were you interested in education? A. Yes, but I had never been actively involved as a teacher or in this manner.

Q. Do you have some children? A. Two, a boy and a girl.

Q. Were they educated in the Denver Public Schools? A. Denver Public Schools.

Q. What schools did they attend? A. Park Hill, Smiley and East.

Q. Where do you now live? A. 1955 Glencoe.

Q. That's in the Park Hill area? [984] A. Yes.

Q. How long have you lived in the Park Hill area? A. All of my adult life, and I grew up there, too.

Q. When did you assume—strike that, please.

Were you subpoenaed to appear here today? A. Yes, I was.

Q. When did you assume your duties on the Board of Education? A. 1951.

Q. In May of that year? A. In May.

Q. And how many terms did you serve? A. Two full terms, twelve years.

Q. Terms of six years each? A. Six years each.

Q. Did you ultimately become president of the board? A. Yes.

Q. What years were you president? A. The last two years, '62 and '3.

Q. Did you hold any other office in connection with your service on the Denver School Board? A. I was vice-president of the school board before I was president, and I also was state president of the school board association.

Q. What year was that? And for what term? [985] A. Well, I was on—I think I was the president of that association for four years, just prior—I was still on it when I left the board.

Q. Now, when you went on the board, what did you do to acquaint yourself with the school district and some of the current problems? A. Well, I—

Q. How did you get oriented? A. Well, I had only been familiar with the schools that my children had and were attending, and I felt that it was very necessary that I know the schools in Denver, so the first year that I was on the board I did visit every school and visited classrooms and looked at plants and lighting and total facilities of each school system, or school building.

Q. Did you ever look in on any classes? A. Oh, yes, many classes, all kinds.

Q. Did you actually sit in on any classes? A. I sat in on them.

Q. Did you get acquainted with any teachers and faculty? A. Teachers and principals, custodians.

Q. Did you use substantial time—shouldn't use that word—did you spend a great deal of time in doing all this? A. It took a full year.

[986] Q. At that time, how often did the board meet? A. Well—

Q. Regular meeting sessions? A. There was a regular meeting once a month.

Q. Is that true in the summer also? A. As I remember, yes.

Q. All right. A. Yes, I know that, yes.

Q. You had special meetings on occasion? A. And we had to have special meetings.

Q. In connection with your meetings, did you hear from the public from time to time on various matters? A. Very definitely. They were encouraged.

Q. During the twelve years you served on the board, Mrs. Johnson, was there any one occasion or more than one occasion in which a pupil was denied the right to attend a neighborhood school at any level, either elementary or secondary— A. Never, to my knowledge.

Q. By reason of his race or color? A. Never.

Q. Was there ever any complaint made by any pupil or by the parents of any pupil that a child was not allowed to attend a school of the subdistrict where he lived by such a reason, race or color? [987] A. Never.

Q. When you got on the board, will you tell the Court, please, what the policy then was in 1951 with respect to having furnished to you statistics and analyses of any na-

ture with respect to racial composition of schools? A. Well, we did not receive this and did not expect to.

Q. Did you have any statistics or charts or anything of any nature which would give you the numbers—either the numbers or percentages of the Negroes in any one particular school? A. No.

Q. Or of Anglos? A. No.

Q. Or any other minorities? A. No, sir.

Q. Were you furnished any data or information with respect to racial or ethnic composition of neighborhoods? A. No.

Q. Whether they were co-extensive with the subdistrict or not? A. No.

Q. Or any areas, if they were even smaller than a subdistrict? A. No.

[988] Q. This, of course, was before Brown against the School Board? A. That's right.

Q. The Supreme Court decision in 1954 after you went on? A. This is right.

Q. As you sent on the board, what was the policy of the board generally as to the neighborhood school principle? A. Well, at that time we all had the feeling that a child should grow from a family situation into a neighborhood situation and that the neighborhood school policy was a good one.

Q. Was that the accepted policy when you went on the board? A. Yes.

Q. Did it remain such during the entire time you were on the board? A. Yes.

Q. Did you learn whether that was a policy that extended pretty much beyond the Denver school system? A. This was pretty much true all over the United States.

Q. How did you learn that? A. Well, I attended na-

tional school board meetings with other people from all over the country.

[989] Q. When you first went on the board in 1951, you said you were just considering the children. What do you mean by that? A. Well, it was my feeling and I think this was true of all the members of the board that we represented all of the children and all of the parents in the city.

Q. Were you aware of the—were you informed after you went on the board as to the constitutional requirements of Colorado with respect to school districts? A. This is right.

Q. During the period that, or when you went on the board, was there any classification of pupils by race or color? A. Not to my knowledge.

Q. In the establishment of boundaries or changing of boundaries on older schools, was that an element of your thinking at any time? A. This was not a consideration.

Q. Now, when the Brown case was decided in 1954, was that considered by you as a member of the board as to its applicability to Denver?

Mr. Greiner: Your Honor, I would object. I don't believe the witness has been qualified to interpret the Brown case.

The Court: Well, she may state as a fact whether [990] they ever considered it.

A. Thank you. It was our feeling that in Denver where we had never had segregation—

The Court: I think the only question, Mrs. Johnson, is whether you ever considered it, so far.

A. (Continued)—yes.

Q. And what was your conclusion with regard to t
effect of the Brown case insofar as the Denver school sy
tem was concerned and your activities as a member
the board? A. That it was not applicable.

Q. Was this also discussed at various meetings you a
tended? A. Yes.

Q. Was this discussed at National meetings you attende
A. Yes.

Q. Do you know whether an opinion was obtained fro
the Denver School Board attorney? A. One was.

Q. Do you know what that opinion was? A. That it d
not apply.

The Court: What did that opinion say?

The Witness: That it did not apply to our situ
tion as we were, as we existed.

Q. Do you remember or can you tell us the fir
few [991] years you were on the board, say from 195
when you went on the board until 1955, if there were a
changes in boundaries of any substantial nature of a
nature that was taken by the board, any action taken
the board? A. You mean boundaries of schools?

Q. Yes. A. Of course, the city was growing treme
dously at this time.

Q. What effect did that have on the board? A. We
we were in a very difficult situation to have enough cla
rooms for all the incoming children.

Q. Why was that? A. Because so many people—t
population had grown so and it was particularly growi
in two areas, in the southeast and southwest areas.

Q. And that was due to newly annexed areas? A. Th
is true.

Q. You were required to take on these newly annexed areas? A. We were.

Q. At that time, the board had no say as to whether they should be annexed or not? A. No.

Q. All right. But from the period from '51 to '55, do you recall of any board action to change boundaries of [992] existing schools within the old area of Denver? A. I cannot recall that.

The Court: What years did you say?

Q. '51 to '55. A. I can't remember whether there were changes at that time or not, but I—well, I shouldn't assume, should I?

Q. Well, if you recall any, we want to know. If you don't— A. I cannot say that.

Q. At this time, would you state to the Court what the procedure was with respect to changes of boundaries at the elementary level? A. Well, there were certain things that we knew the staff would consider and, after their consideration, they simply worked within that consideration.

Q. Did the board take formal action on elementary boundary changes? A. Yes.

Q. Or was that basically the superintendent's— A. Well, it was basically done by the superintendent, but action was ratified.

Q. Would he report to the board? A. This is right.

Q. Was there a different procedure with regard to [993] secondary schools? A. Yes, sir.

Q. Tell us what the difference was and how the secondary school boundaries were handled. A. Well, this was very carefully studied with many considerations. We considered, first of all, the school population, the trends in the popula-

tion, and we tried to have these trends considered for a period of time into the future, because—

Q. Projecting ahead? A. Yes, projections.

Q. All right. A. And transportation, safety of children, available rooms, all of these things were part of our consideration.

Q. You considered geographical features? A. Yes.

Q. Man-made features? A. Yes.

Q. Such as what? A. Well, when the highway came through, the Valley Highway came through, we had to consider this.

Q. All right. When you referred to transportation, were you referring to public transportation? A. Public transportation, primarily.

Q. Was building capacity in adjacent areas important? [994] A. Very. If we had vacant rooms, we had to use them.

Q. What about feelings of the community in connection with boundaries? A. From the time I went onto the board, this was always invited. We wanted to know what the community was thinking.

Q. Why was that? A. Well, we are representatives of the people, and we had to know what they wanted.

Q. And how would you learn of the feelings of the community? A. People were invited to come into our meetings and we would go out to private meetings, too.

Q. Did you attend many meetings during— A. Many.

Q. During your period on the board? A. A great many.

Q. Now, in considering the potential change in boundaries, for example, Mrs. Johnson, would you consider all of these factors or elements? A. Oh, yes.

Q. Was there any formula that you could say as to the ultimate weight of these factors, one factor should have

a weight of ten, another of twenty, another of five and so forth? [995] A. No, no, what was the best for the youngsters was the only formula that we were interested in.

Q. It was a decision-making process, considering all these various factors, then? A. That's right.

Q. Was there a difference in the weight given to some factors, say, between the elementary school and the weight you'd give to the same factor in a high school? A. I don't think I understand that.

[996] Q. Well, for example, a traffic situation. Would that make some difference? A. Yes, little children—you had to be much more careful. But even so, you had to consider traffic problems for big children, too.

Q. You had to consider more than merely building capacity and pupil membership, is that correct? A. That's true.

Q. Was that true in every instance? A. This is true in every instance.

Q. From time to time did you receive any documents from the staff of the district which were called staff proposals? A. Yes.

Q. What is meant by a staff proposal? A. Well, for instance, in your boundaries, if after they had been studied they would be presented to us and these boundaries were suggested would be an included part of these things.

Q. Would you— Pardon me. A. Where we had to have new buildings, all of this was part of it.

Q. Was this a constant thing that was going on? A. Constant, yes.

Q. And why did this have to be a constant feature? [997] A. Because of the influx of people that were coming into Denver. Denver was growing tremendously at that time.

Q. Was every staff proposal that was made rubber stamped and enacted? A. No, they were studied very carefully.

Q. Some enacted or adopted and some were not? A. Some were and—

Q. And some were adopted or adopted as amended? A. Some were adopted and some changed and modified and then adopted.

Q. Do you recall that in 1956 Hill Junior High opened? A. Yes.

Q. What effect did that have with respect to the necessity for boundary changes? A. Well, of course, every time you build a school this involved not just the people that were right there but the surrounding schools, surrounding territories. And so this involved changes at—such as Gove, and—I believe Morey was involved. It involved a great area.

Q. Is it true that it involves not only the immediate area and the schools surrounding it, but it could have a dominant effect beyond that? A. That's right.

Q. Was this true in this instance? A. It was true in every instance.

[998] Q. Do you recall receiving a staff proposal about in January of 1956 with respect to a large number of boundary changes? A. I don't remember the dates.

Q. But you remember receiving a staff proposal? A. Yes.

Q. Arising due to this—that Hill was opening? A. Yes.

Q. And could you tell us whether all of these various proposals or all the various parts of these proposals were related? A. Well, yes, they were.

Q. When these proposals were made public, were mem-

bers of the public again invited to express their opinions concerning the same? A. Yes, we had hearings.

Q. Do you remember whether all these proposals were adopted at the first meeting? A. Well, I would doubt that they were.

Q. Do you remember what happened at that first meeting when they would be voted upon in January of 1956? A. No.

Q. Do you remember whether part of the proposals involved a strip just west of York Street and between Cole and Smiley, Manual and East? This is going back a long time, [999] I know, but if you could to the best of your recollection— A. I'm not sure if this was when it was involved or not. I know the area you mean.

Q. Do you recall attending some meetings regarding the Manual boundaries? A. Yes.

Q. And again to refresh your recollection, new Manual was opened in 1953? A. That's right.

Q. So this would be about—well, early 1956, not quite three years later; two and a half years later? A. Yes.

Q. Do you recall at that time various discussions concerning the boundaries of Manual? A. Yes.

Q. Do you remember attending some meetings in this connection? A. Yes.

Q. Do you remember where those meetings took place that you attended? A. Well, I attended all kinds of meetings in the school and in homes, all over.

Q. In connection with this particular boundary? A. This particular boundary?

Q. You remember Mr. George Brown at that time? [1000] A. Yes, he attended some of them.

Q. Now, at that time in attending these meetings, could

you tell us whether you as a member of the board— Well, let me rephrase that.

Q. In attending these meetings, what did you find as to the attitude of the people living in the community who attended and expressed their opinions? A. Well, there were many different areas and many different kinds of suggestions that were made. But, it was difficult to find a spokesman for the total area. There were just too many voices.

Q. Were you able to find anyone who you thought spoke for the majority of the people in the area? A. No.

Q. Did you find that there was any substantial agreement among all the various people that attended these meetings that would represent the majority of the area? A. No. Quite diversified.

Q. At that time did you have any documentation from the school staff with projections? A. Oh, yes. We were constantly having projections four and five and six years ahead.

Q. Did you have with respect to this particular boundary change? A. Of course. Again, the city was growing so rapidly [1001] that even projections were not always as accurate as we liked to have had them.

Q. Now, even the figures and the projections you had— did they have any breakdown at all by race or ethnic composition of the areas? A. No.

Q. Or of the schools? A. No.

Q. Or of the neighborhoods involved in the change? A. No.

Q. At these various meetings did anyone come forward with any racial or ethnic statistics that you thought you could rely on or at all? A. I'm not sure; if people in the

community told us of their race, groups and ethnic breakdowns, I'm not sure of that.

Q. You had no figures from school census or— A. I had no reliable figures I could accept.

Q. Now previously you mentioned various factors that you normally considered in evaluating whether a boundary should be changed or not. A. Yes.

Q. Did you consider all those various factors in this instance? A. Yes.

[1002] Q. Was your ultimate aim in making these—in making any change—what were you trying to accomplish when you were considering a change? A. The best possible learning situation for the young people that we were trying to serve.

Q. Was your ultimate decision in making the boundary change in 1956 between Manual and East based upon this, then, the various factors you considered? A. This was our attempt.

Q. Did you have any racial or ethnic motivation in mind to desegregate anyone? A. No.

Q. Now, Mrs. Johnson, were you active in considering the construction of Barrett Elementary School? A. Yes.

Q. Was it East 29th and Jackson Street? A. That's right.

Q. In the area of ground involved, what boundaries—what were the boundaries generally? A. Well, Colorado Boulevard and— Oh, dear—down two blocks.

Q. Jackson? A. Jackson. Uh-huh. And from 28th.

Q. 29th to 32nd? A. I'm not sure of the boundaries.

[1003] Q. Do you know how long the school district had owned that property? A. It had been held when I went on the board.

Q. It was already owned? A. It was already owned.

Q. Mrs. Johnson, what's been the policy from your experience on the board and your knowledge of the board activities with respect to site acquisition, and looking ahead? A. Well, again, they tried to— At this time we were trying to project the needs of the community within a reasonable time, five, ten years.

Q. My question is generally to site acquisition. A. Well, this is it.

Q. I'm sorry, go ahead. A. And to try to serve the community that would be surrounding it.

Q. Were you on the board when the site at 6th and Monaco was acquired? A. No, but when it was sold.

Q. Do you know of any property that was owned by the board during your tenure of office and the other site which was used east of Colorado Boulevard out in the Hallett area, and the Smith area? A. For what purpose?

[1004] Q. That was being held for school—a possible school site? A. There may have been some elementary areas held in there. I'm not sure. There was nothing large enough for a high school.

Q. Was there anything large enough for an elementary school, say, east of Barrett?

Mr. Greiner: I believe the witness has answered that question, Your Honor.

The Court: We will give her another chance.

A. East of Barrett? I don't know. I can't answer that.

Q. Were you on the board when other high school sites were acquired? A. Oh, yes.

Q. And in projecting those, where did you locate these and why? A. Well, of course, out in the southwest and southeast area which was growing so very rapidly, we

were having to have areas annexed because we could see where the community was growing and schools were built upon newly annexed land.

Q. You were virtually at the city limits at both Thomas Jefferson and Kennedy, weren't you? A. That's right.

Q. Now, getting back to Barrett, if we may, please— [1005] when was the planning done or even commenced with respect to Barrett Elementary School? A. As I remember it, about three years before we were having this terrific influx at Columbine and Harrington and we knew we had to build or do something about it. And I think it was about three years before that the projections began.

Q. About 1957? A. That's right.

Q. Do you know when the school was finally authorized? What year? A. Oh, I can't give you the date.

Q. And it was constructed then so as to be ready for occupancy in 1960? A. That's right.

Q. Were you aware of the change in the racial composition in your area north of the city, in the area north of City Park during this period of time? A. This was changing very rapidly. I knew, because I lived there.

Q. Did you have any statistics, however, during the time of this planning at any specific time as to the racial or ethnic composition of the pupils in that area? A. No.

Q. Did you have anything yourself available to you that [1006] was indicating to you the rapidity of the transition from white to black? A. Figures?

Q. Yes. A. No.

Q. Did you know where the transition—how far it was going to move geographically either east of Colorado Boulevard or east and south? A. I doubt if anyone could have known this exactly.

Q. Did you have meetings with parents and interested people in that area? A. Yes, a great many.

Q. During this period of time was it necessary to make any optional elementary school areas? A. Yes, we had to transport children to other schools.

Q. Do you remember how many were transported to Park Hill? A. I can't remember, but quite a number. A couple of hundred, I would say, but I'm not sure.

Q. Now, did you consider whether you should build another elementary school in this area at all? A. Yes.

Q. And the people who attended your meetings—were they unanimous in the opinion one way or the other? A. No, not unanimous.

[1007] Q. Tell us what the feeling was. A. Well, a great many people wanted the school there and we knew that the children were there without having to be transported at all, so as far as I remember, there were no children who were brought in by busses.

Q. You mean after Barrett opened? A. After Barrett opened.

Q. Was there some opposition to building the school in that spot? A. Yes.

Q. Again, on this occasion, did you find anyone or any one organization that you felt could speak for the majority of the people in the area? A. No.

The Court: It would be surprising if she could, anyway, in any area.

Mr. Ris: I agree.

The Court: I mean, they're not composed that way.

We will take a short recess.

(Whereupon, the trial recessed at 3:29 p.m.)

[1008] (The Court resumed after a recess at 3:45 o'clock p.m.)

Mr. Ris: May I proceed, sir?

Q. Mrs. Johnson, I think one thing that we have not previously discussed is the matter of finances in the school district. A. We were always short.

Q. Well, in your long-term planning, to what extent are they a factor, either— A. Well, rather decisive.

Q. Well, are they a factor? A. We always needed more classrooms than we had money to finance.

Q. You are referring now to capital funds? A. That's right.

Q. And the availability of such funds? A. That's right.

Q. Now, getting to the record, how are such capital funds made available? A. Well, bond issues.

Q. And that required an election? A. This required an election by the people, yes, sir.

Q. So, in planning additional space or any planning involving any substantial expenditures, that was a major consideration? [1009] A. It had to be.

Q. Now, getting back to the Barrett problem—

The Court: Now, whether the electorate would approve the bond issue?

The Witness: Well, of course, that was always a question, too, but after it had been approved, we still—we couldn't always build new schools to replace old schools, because we had so many areas where we had to just put in classrooms.

Q. But every bond issue did require a vote of the people? A. That's right.

Mr. Ris: That was the Court's question, was it not?

The Court: Well, I knew that.

Mr. Ris: Well, I was not sure—

The Court: I said was that a consideration in making their plans?

Mr. Ris: I see. Beg your pardon.

The Court: In making their plans, whether the electorate would consent.

Q. Getting back to Barrett, now, if we may, Mrs. Johnson, would you tell us approximately what period of time or how rapidly the Barrett matter was brought to a head when you made your decision? A. Well, we had to build faster than we wanted to at [1010] that particular spot. The studies were completed, but they were not projected as much as we would have liked to have had them done, because we simply had to have more classrooms.

Q. Now, will you tell us how the decision was made as to the type of building and size of building? A. We used a prototype there—what was the size of the building? I can't tell you that.

Q. Were you building another prototype at the same time? A. Yes.

Q. Where was it located? A. Out further east.

Q. Were you also building at Denison in southwest Denver? A. It was Denison, I beg your pardon. It was Denison.

Q. All right, how was the determination made with respect to the site for Barrett? A. We had land there which had been, as I told you, acquired before I was on the board, and there were enough children right there to fill a grade school, so we used this land which was available.

Q. Now, this site was not in the center of the proposed subdistrict for Barrett, however, was it? A. No children were bussed in.

Q. No, but it was not in the center of the subdistrict? [1011] A. No, it was not.

Q. Did you consider placing it more central? A. Yes.

Q. Did you own any land there? A. We didn't have the land, and we did own this land, so we used it.

Q. Did finances enter into that at all? A. Very definitely.

Q. How? A. Because we had the land and we didn't have the money.

Q. Now, with respect to the setting of the easterly boundary at Colorado Boulevard, would you tell us about that, please? A. Well, at this time, Colorado Boulevard became a central highway into the city, six lane, and thinking in terms of the safety of the children, we couldn't go beyond there in our thinking, and we had children who could safely get to the school that would fill the building.

Q. Even though this school was on one edge of the subdistrict, were all its children within walking distance under your prescribed boundaries? A. I don't believe we transported any children there.

Q. Did you have any racial considerations in mind to keep the whites from Stedman coming to Barrett? [1012] A. No, when that was started there were, I am sure, although I have no statistics, both black and white children in the area.

Q. In the planning stage? A. In the planning period.

Q. Was there a change during the planning period? A. A very radical change.

Q. To what? A. To more black children moving in.

Q. Even before Barrett was built, you mentioned that

Harrington and Columbine were overcrowded. Did you acquaint yourself with the situation that existed there, say, about 1952, when there were some boundary changes made at the elementary subdistricts? A. I am sure I was involved. I think it was a little after '52 that I really met with a great many parents in the area.

Q. You took a personal interest in that yourself? A. Took a personal interest in it.

Q. And various changes were made in boundaries of those schools from time to time? A. That's right, we tried to keep the classes as small as we possibly could, and that involved some boundary changes.

Q. Were there any racial or ethnic considerations in making those changes? [1013] A. No.

Q. Now, after Barrett was filled and occupied—

The Court: Now, Columbine and Harrington—

The Witness: Yes.

The Court: —you say were overcrowded and Barrett was built primarily to relieve this?

The Witness: Yes.

The Court: Well, isn't it true that some students came from east of Colorado Boulevard to Columbine and Harrington before Barrett was built?

The Witness: To Harrington, at one time I think there were children, yes.

The Court: Excuse me, go ahead.

Q. Was that true after Colorado Boulevard became six lane? A. No, and it was not true after—let me think. I am not sure that it was true from the time I was on the board, but there had been a time I believe when that was true. We had new grade schools above Colorado Boulevard that I believe took care of this situation.

Q. Now, after Barrett was occupied, was there then a proposal to build a junior high at 37th and Colorado Boulevard? A. There were considerations of this; no actual proposal.

Q. Was any action taken either to do so or not to do so [1014] while you were on the board? A. We decided not to.

The Court: Can you gentlemen hear Mrs. Johnson all the time?

Mr. Greiner: Fairly well, Your Honor.

The Court: Will you keep your voice up just a little bit?

The Witness: All right, I am sorry.

Q. And can you give us some of the history of that particular incident? A. Will you restate that, please?

Q. Can you give us some of the history with respect to the suggested junior high at 32nd and Colorado and the decision not to construct one at that location? A. Well, it was not an acceptable thing in the community and we did have many hearings.

Q. And those were in '62? A. Yes.

Q. And did you arrive at some conclusion or some feelings within yourself as to what the sense of the community was at this time? A. This is right, we had many hearings.

Q. Now, did this lead to anything else, this particular episode, and the decision that was made? I am thinking particularly— [1015] A. Well, you are thinking of other junior high schools? I mean, the overloading?

Q. No, I am wondering if this had any relationship to the creation of a special study group, the Voorhees Committee. A. Very definitely.

Q. Was this an outgrowth— A. This was a total outgrowth. We felt the total community should be more closely concerned with our planning.

Q. Was there a decision with respect to Smiley Junior High at this time? A. Yes.

Q. What happened there? A. We built on there, made more facilities, and there were some changes in boundaries there, too, that affected the adjoining junior high.

Q. When the new boundaries were established for the three new senior high schools in 1960, George Washington, Lincoln, and Thomas Jefferson, was there any problem either of a racial or ethnic nature? A. No.

Q. Or any complaints at that time of setting the boundaries on racial or ethnic grounds? A. No.

Q. With relation to the overcrowding at Stedman School in about 1963, did you acquaint yourself with that [1016] situation, Mrs. Johnson? A. Well, I was in and out of the school constantly.

Q. Do you recall any proposals or discussions concerning changes of boundaries in the Stedman and Hallett-Park Hill complex? A. Yes, there were some.

Q. And can you tell me what you recall concerning those proposals and the changes made?

Mr. Greiner: Pardon me, Your Honor, but could we have it established for the record that she is still speaking now of when she was a member of the board? She went off the board in '63.

Mr. Ris: I am talking about—I beg your pardon, yes, that's a valid observation.

Q. We are still referring to while you were on the board? A. Yes.

Q. Now, Stedman became overcrowded and there were problems in the Stedman-Hallett area? A. Yes.

Q. Do you recall any proposals being made in 1961, '62 or '63, in that area, for changes? A. Well, there were a great many being made. I can't be explicit.

Q. Do you recall as to whether there were some proposals [1017] made for study by the staff for that area? A. There were.

Q. Were there any changes either made or deferred in that area, 1961, '62 or '63, that were made because of racial or ethnic considerations? A. I can't answer that, if we made them at that time or not. There were changes made in the area, but I am not sure as to the dates.

Q. Well, were they made with racial or ethnic considerations? A. Oh, no, no.

Mr. Greiner: We can't hear.

Q. You will have to speak up. A. Oh, no, I am sorry, there were no racial reasons for changing boundaries.

Q. Or for not changing boundaries? A. Or for not changing boundaries. Can you hear me now?

Mr. Greiner: Yes.

The Witness: I am sorry.

The Court: She is referring to Stedman in '62 and '63?

The Witness: Yes.

Mr. Ris: My question related to '61, '62 and '63, yes, sir, that period.

[1018] Q. Now, there has been some evidence, Mrs. Johnson, that in 1962 there were some boundary changes recommended for the Stedman area with respect to placing

overflow in Smith, Hallett and Park Hill, and that four of those were adopted and three were deferred. Do you recall that particular period? A. Well, there were some deferred because the evidence we had was not conclusive as to what we should be doing. This was the only thing that I particularly remember. What did you—I don't know what you—

Q. Well, these were again—

The Court: You can lead her or call her attention to what you want her to focus on, Mr. Ris. I think we will save some time.

[1019] Q. Mrs. Johnson, I'm handing you Plaintiffs' Exhibit 53, which has previously been admitted to evidence. And these have been admitted to evidence on the basis that these were proposed boundary changes for February, 1962, and apparently were based upon Plaintiffs' Exhibit 52, a study document. A. Yes.

Q. Do you recall the document entitled Exhibit 52? A. Not as 52. I know we had this kind of thing constantly.

Q. Do you recall the specific document? A. No.

Q. Now, it says for study only on Exhibit 52. What is the meaning of that? A. Well, this was for consideration and was the usual way in which these were presented to us. It didn't mean it was necessarily to be adopted just as it was given to us, but for us to study and then question.

Q. And when you received a document as such—such as Exhibit 52, did you study it? A. Yes.

Q. Did you take into consideration the various factors that you previously related? You did consider, in determining where boundary changes should be made? A. Yes.

[1020] Q. And those elementary boundaries which the

superintendent would often take initiative to change and then report to you—did you study these as well? A. Not in depth, as we did the others. But if there was a question I can remember times when parents questioned certain boundaries and then I did study them.

Q. Now, there has also been evidence in the case, if you look at the map, Exhibit 53, that of the seven changes shown there or proposed changes, which again the evidence previously relates back to 52, that the three directly surrounding Stedman were not made at the time and the other ones were. Do you recall that? And the reasons for it? A. As I say, there was considerable discussion at this time and it was our feeling that we were not sure what should be done at that particular moment. And so those changes were not made.

Q. Now, apparently the year following, one of the remaining changes was made and a second one was made in part. Do you recall that? A. No, I don't.

Q. Now, is there any other reason for not having made the three Stedman changes initially that you can recall? A. No.

Q. Is there any intent to segregate the blacks in Stedman and permit the whites to get out of the Stedman [1021] area by this? A. No, this was not part of it.

Q. You're sure of that? A. There was no part of that.

Q. Again, at the time that these—or the situation with respect to Exhibit 52 was concerned, did you at that time, do you recall, have any statistical analysis or evidence before you as to the numbers of Negro children and Anglo children in the various areas? A. No. I didn't—I don't remember this ever occurring.

Q. Now, I would like to direct your attention to another

boundary problem and this relates to Cole, Morey and Byers as a result of a study made in 1962.

I hand you what's been marked as Exhibit 405 and ask you if you recall that particular exhibit? A. I do.

Q. Was this study by you? A. Yes.

Q. Was it discussed at board meetings? A. Greatly.

Q. Were there hearings held on it? A. There were hearings held.

Q. In conjunction with this study did you have any [1022] racial or ethnic breakdown by any areas? A. No.

Q. Either Cole, Morey or Byers? A. No. No statistical reports.

Q. What did you personally know as to the racial and ethnic composition of Cole at that time? A. I knew it was changing. I was in the schools.

Q. What did you know about Morey at that time? A. Well, Morey's population was changing in that it was now becoming more and more of an apartment area and this was making for vacancies. There were smaller numbers of children that were available to the school.

Q. Were hearings held with respect to the changes referred to in Exhibit 405? A. Yes.

Q. And again what considerations were taken or what factors were considered by the board in coming to a decision as to whether any changes should be made in this Cole, Morey, Byers boundaries? A. All of the usual considerations. We considered availability to the children by transportation, safety of the children, rooms available, moneys available, and future trends of the communities.

Q. Was there anything special going on at Morey with regard to capacity ntilization at that time, do you recall? [1023] A. Do you mean our special education classes?

Q. Yes. A. Yes.

Q. At that time was the rating capacity of Morey realistically reflecting what was going on in that building? A. Well, if you mean a special—A special education class was a very special kind of thing. You didn't have the usual number of children in special education in one classroom. Therefore, the space might be occupied and yet the numbers might be much less than you would anticipate in a classroom.

Q. Do you know rated capacity was determined at that time; the formula? A. No, I don't.

Q. Well, then, with respect to the changes made in 1962, changing some of the boundaries between Cole and Morey, Morey and Byers, was there any racial or ethnic discrimination— A. No.

Q. —as a background for that at all? A. No.

Q. Or, any intent to segregate? A. No.

Q. Or any projection by race or ethnic composition as to what would result? [1024] A. No.

Q. Did you know a Mrs. Mildred Biddick? A. Yes.

Q. Was she given a special assignment in 1962? A. Yes, Miss Biddick was brought in to do some special work with regard to minority people in the schools.

Q. Was she put in what is called a community relations department? A. That's right.

Q. Was one of her responsibilities to make some racial and ethnic studies? A. Yes.

Q. So, during your term on the board, was this the first time then that you began to get into the racial and ethnic studies? A. This is right. This and the Voorhees committees were almost simultaneous.

Q. Now, could you tell us what the policy was during the period you were on the board with respect to recruiting

of staff and faculty members from minority groups? A. Well, an awareness was developing within the board that we needed greater understanding of minority people and we were very anxious to have more and more minority teachers in the schools. So we expanded the area in which the people who were doing our hiring operated. And we explicitly [1025] instructed some of our people to go to southern schools to secure qualified Negro teachers for the Denver Public Schools.

Q. Were assignments and transfer matters, matters for board determination? Or were those administrative acts? A. Those were administrative acts.

Mr. Ris: Thank you, Mrs. Johnson.

Cross-Examination by Mr. Barnes:

Q. Mrs. Johnson, you began by telling us that you took, when you came on the board in 1951—you toured in all the schools in the district. Did you get any idea of the racial composition of those schools when you were in them? A. Yes.

Q. Were you able to learn, for example, that some schools were predominantly minority as opposed to others? A. Yes.

Q. And that Cole Junior High was predominantly minority? A. Yes.

Q. And that Manual High School would have been predominantly minority at that time? A. Well, it was getting that way, yes.

Q. And did you also go to Smiley and East during those [1026] tours? A. Yes.

Q. And were you able to determine whether or not these were predominantly minority schools? A. Well, I'm not sure that I did this.

Q. You didn't go there for that purpose? A. I did not go for this purpose, no.

Q. But you were able to look around and see whether or not they appeared to be? A. Yes.

Q. Did they appear to be predominantly minority schools?

Mr. Ris: What year?

Mr. Barnes: 1951.

Q. This was when you first came on the board? A. Yes.

Q. I don't know if I have the answer to the question. A. Yes, I could tell that there were more white children than there were black children.

Q. Calling your attention, Mrs. Johnson, to the events in 1955 and 1956 when the proposal for the boundary change with Cole and for Cole, Smiley, Manual, Hill and East, Hill, Gove and Morey were all being considered, do you recall that there were several meetings of the school board devoted to the consideration of those proposals? [1027] A. I'm sure there were.

Q. Do you recall having received invitations to attend meetings in the community to discuss those proposals? A. Yes.

Q. Do you recall an invitation to attend a meeting on January 17th, 1956, in the Y.M.C.A.? A. I went to the one at the Y.M.C.A. I don't remember the dates.

Q. You don't know whether you went to that particular meeting or not? A. I don't know the date.

Q. I'd like to put Defendants' Exhibit AD on the easel.

The Court: What are you talking about now? 1956? January?

Mr. Barnes: Yes, Your Honor.

Q. This is in evidence, Mrs. Johnson, as a defendants' exhibit illustrating the junior high boundaries in January of 1956. The red line has been indicated as the line for the changes which were made January 18th at the board meeting, 1956, for the Hill and Gove Junior High Schools. Do you recall those changes being made at that time? A. This was with the opening of Hill?

Q. Right. A. I remember the changes were made then.

[1028] Q. And that the other changes involving Cole and Smiley and Manual and East were not made at that time? A. Yes.

Q. And was there any time subsequent to that when Hill and Gove boundaries were further changed in addition to changes that are shown on that exhibit? A. The Hill and Gove, and what else?

Q. Just the Hill and Gove. As I understand it, these changes are the changes—or the changes indicated by the red lines were made at the January 18th, 1956, meeting. Do you recall any subsequent changes in those?

The Court: Why don't you point out the change that you want her to comment on?

Mr. Barnes: I think the answer, Your Honor, that I want is that there were not.

The Court: Isn't there another piece of Gove that was given away along that time—somewhere along the line there?

Q. I'm thinking of the period between January and September, 1956.

The Court: Well, you're asking her whether there was any change at any time?

Mr. Barnes: Yes.

The Court: In Gove and—

Mr. Barnes: Yes; perhaps that's too broad a [1029] question. What I wanted to point out was the period prior to September, 1956, and after January of 1956.

A. Prior and following when? Following the opening of Hill?

Q. And prior to September the following year. A. I don't remember that there was.

Q. During that period there were changes, were there not, with regard to Smiley and Gove and Manual and East? A. I can't remember in detail when these took place.

Q. But you don't remember that at the time that those changes were made they—that there were also additional changes made to Hill and Gove boundaries? A. Well, there were changes to Smiley.

Q. Well, Smiley, East—when the Smiley, Cole and Manual, East changes were subsequently made, you don't recall that there were also additional changes in the Hill and Gove boundaries?

The Court: You mean simultaneously?

Mr. Barnes: Yes.

The Court: I guess you can answer that, yes or no, whether you remember or not, Mrs. Johnson.

A. No.

The Court: You don't remember?

The Witness: I don't remember.

The Court: You don't remember whether there were, [1030] is that correct?

The Witness: I don't remember that there were.

The Court: Okay. Really, it's not a memory test, anyhow, I don't think. I don't know how she could be expected to remember the details of this kind. I mean, why don't you ask her—point up to her specifics and maybe she will remember. Don't you think it would be better—that would be a better way?

You can ask leading questions, you see.

[1031] Q. Well, there weren't any changes—I think we have that point, Your Honor, I won't belabor that one.

The Court: All right, good.

Q. At the board meeting which you recall to have been about in January of 1956, do you remember the presentation by representatives of the minority community that were made that evening? A. I can't say that I remember them by date, no.

Q. Do you remember at any board meeting when these boundary changes, being the Cole-Smiley, Manual-East, Hill-Gove changes, were made, when presentations were made by members of the minority community? A. Yes.

Q. And do you remember that they discussed capacity utilization of the schools involved? A. Yes.

Q. And discussed transportation? A. Yes.

Q. To different schools involved? A. Yes.

Q. And discussed the comparative distances to these schools? A. Yes.

Q. And do you recall that they discussed the fact that the transportation patterns at that time ran down 28th and [1032] 32nd past Cole and Manual as opposed to down toward East? A. Well, I knew this because I live in the area. I am not sure whether I remember that discussion or not.

Q. But you knew that the transportation was direct to Cole and Manual? A. Yes.

Q. From your residence in that area, did you have knowledge of the general racial characteristics of the residential area surrounding Manual High School? A. Yes.

Q. And did you have some idea that that area was predominantly Negro? A. Yes.

Q. And did you have some idea that the area above City Park was either in transition or predominantly Anglo? A. Yes.

Q. Mrs. Johnson, you testified about the neighborhood school policy. What is your concept of neighborhood? A. Well, I have always had the feeling that a child learned a great deal by being able to walk to school.

Q. And your concept is that the neighborhood school policy requires a district within which a child can walk? A. This would be my idea, yes.

Q. Does the Gove boundary line which you see indicated there comport to that idea of the neighborhood school policy? [1033] A. Well, now, you are talking now not about an elementary child but a junior high school child, who is a little more adult.

Q. That's correct. A. And can probably go longer distances.

Q. Is it your idea that the neighborhood school policy does not apply then to junior high schools? A. No—

Q. Or that it is just modified? A. I think this is a modification. A child is growing to learn a larger area.

Q. There is, is there not, considerable distance from this end of the Gove district to— A. Yes.

Q. —to that school? A. Yes.

Q. What about the consistency between the neighborhood school policy and the boundary line for Cole and Smiley which is indicated on Exhibit AD? Cole appears to be four blocks from its boundaries and Smiley more than forty. Does that comport to your concept of a neighborhood school policy?

Mr. Ris: Just a minute, I think that's a misstatement, because he is putting all of the optional area there into Smiley, and so it is not a fair statement of what the map shows.

[1034] The Court: Well, I can't tell from here. Are you including in this forty-block question the optional area?

Q. Perhaps I could restate it. A child who lived within four blocks of Cole could attend Smiley Junior High School under the conditions that are portrayed on that map, could he not? A. Yes.

Q. So that a district neighborhood school policy based on distance is not necessarily in operation there, is it? A. Well, this is part of your open policy of allowing the child to make the choice, or the parents to make that choice.

Q. You testified that you heard several voices at the series of board meetings in early 1956 from several portions of the community and that you were unable to determine, I think, unable to determine what was the majority voice? A. Yes.

Q. Is that an accurate statement? A. This is true.

Q. Were you making an attempt to discover what the majority voice was? Would you have followed it if you had been able to determine? A. I think we were making a very definite attempt to discover a voice.

Q. A majority voice? [1035] A. A majority voice.

Q. And might have been governed by what you considered to be a majority opinion? A. Well, it would certainly have helped and would have been one of the things that would have helped in making a decision.

Q. Handing you, Mrs. Johnson, what has been identified as Plaintiffs' Exhibit 416, have you seen that document or a similar document before? A. Many like this. I am sure I have probably seen this.

Q. Can you state what it purports to show? A. Well, it shows the present capacity of the various junior high schools and the anticipated one within a period of time.

Q. And it is dated April 19, 1955? A. 1955, yes.

Q. When you were on the board? A. Yes.

Mr. Barnes: Exhibit 416 has been stipulated as to its authenticity by the defendants, and we offer it into evidence.

The Court: Any objection to 416?

Mr. Ris: I would like to take a look at it again. Thank you.

[1036] The Court: This is a junior high projection?

Mr. Barnes: Both junior and senior high schools, Your Honor.

Mr. Ris: No objection.

Mr. Brega: No objection.

The Court: 416 is in evidence.

(Plaintiffs' Exhibit No. 416 was admitted into evidence.)

Q. Turning your attention to 416, can you identify for the junior high schools as of that date what the stated capacity of Cole Junior High School was? A. 1908.

Q. And can you state what its projected capacity or what its enrollment was at that time? A. 1401.

Q. So it was under caapcity at that time? A. Yes.

Q. What does it show there to be the projected capacity for Cole Junior High by 1960? A. By 1960, it will be up to 1920.

The Court: What is the date of this projection?

Mr. Barnes: April '55, Your Honor.

Q. So it would have been just at capacity by 1960? A. Yes.

Q. What is the capacity stated for Smiley Junior High [1037] School in 1955? A. Smiley, 1446.

Q. And its enrollment? A. And its enrollment was 1555.

Q. So it was over capacity? A. Yes.

Q. What was its projected capacity by 1960? A. 2,354.

Q. So, it was projected to be expected to be considerably over capacity by 1960? A. Yes.

Q. Now, in your consideration of the boundary changes that were made between Cole and Smiley in 1956, would you not have been able to alleviate that overcrowding which is projected there in Smiley by moving the Cole boundary farther over to the east? A. Well, there were many considerations to be thought about. This was one of them.

Q. But on a strict capacity basis, it would have made sense, would it not, in accordance with those projections to

include more students in Cole? A. Decisions weren't made that way, on one strict basis.

Q. I understand that, and I am not trying to force you to say that they were; but on that criteria alone— [1038] A. This is right.

Q. —we could have moved the boundary farther to the east? A. This is right.

Q. Turning your attention to the second page of the exhibit, which shows high school projections, can you state what the Manual High School capacity is in 1955? A. 1600.

Q. And its enrollment? A. 994.

Q. So, it is considerably under capacity? A. Yes.

Q. And what is the projected capacity by 1960? A. 1615.

Q. So, it would have reached just about capacity by that time? A. Yes.

Q. What is the capacity for East which is indicated there? A. 2462, with a membership of 2468.

Q. So it is already at capacity? A. Yes.

Q. In 1955. What is the projected capacity for 1960? A. 4,257.

Q. Or considerably above what its capacity is? [1039] A. A great deal.

Q. Would it not have made sense then to move the East boundary as well farther to the east to that more of those students could have been taken into Manual High School? A. Well, again, if this is the lone consideration, yes.

Q. You stated, Mrs. Johnson, that one of your considerations was to take advantage of available classroom space, did you not? A. Yes.

Q. And there was available classroom space at both Cole and Manual, was there not? A. Yes.

Q. And by those projections it would not have been taken advantage of until 1960, would it? A. According to this, no.

Q. Was there any reason to not take advantage of it in 1956? A. Yes.

Q. What was that reason? A. We were trying to make projections for the total city. We were trying to keep the children in the same schools for the period in which they should attend that school, and your projections do change within that period of time. You have to consider getting to the schools.

[1040] Q. You testified, did you not, that the transportation which you knew about went directly to Cole and Manual? A. Yes.

Q. So, that considering both transportation and capacity utilization, there were some good reasons for expanding the boundaries of Manual and Cole, were there not? A. Yes.

Q. Now, over the years during the time you were on the board, were there a great many elementary school changes? A. Oh, yes.

Q. Elementary school boundary changes, excuse me. A. Well, yes, particularly in the southwest and southeast areas.

Q. This is just a small point, but are they all reflected in the school board meeting minutes, to your knowledge? A. Yes.

Q. All of the boundary changes that were made? A. Yes.

Q. Considering the construction of Barrett, Mrs. Johnson, is this another example where it was difficult to obtain a consensus of the community? A. Yes.

Q. And would you have followed a consensus, had you

been able to find it? [1041] A. As one member of the board, I cannot answer it.

Q. Would you have personally been guided by what you thought was the consensus? A. I certainly would have been guided.

Q. You mentioned a point about finances and the difficulty of obtaining money to build sufficient classroom space. Would it not have been unnecessary to build classroom space if the spaces at Cole and Manual had been fully utilized? A. No, not on a city-wide projection.

Q. Well, you had some 500 spaces in Manual, did you not, that were empty? A. Yes.

Q. And you had somewhere between two and three hundred spaces at Cole that were empty? A. Yes.

Q. So, it would have made financial sense to use those spaces, would it not? A. Not necessarily. Again, you are having to consider some other factors. You have to consider where the growth of your community was largely coming, and it would mean transporting children great distances, and at that time we did not believe in transporting children so far if anything else could be done, and we had never transported high school children.

[1042] Q. Was it more expensive to transport children than to build new schools? A. Well, it would be a temporary thing, I should think, because those communities were continuing to grow.

Q. Mrs. Johnson, a number of other schools were built during the 1950's in addition to Barrett in 1960 with different capacities than Barrett, were they not? A. Yes.

Q. For example, Bradley was built in 1955 with 960 students, was it not? A. Yes.

Q. And Coswell in '54 for 510 students? A. Yes.

Q. I'm sure you don't remember these exactly. A. No.

Q. But they may sound about right to you. A. right.

Q. And Doull with 950 students and Force in 1956 t 915 students? You have to answer so it goes on the r Mrs. Johnson. A. Oh, yes.

Q. Thank you. And Greenlee in 1952 with 915 stud A. This sounds right.

Q. And Knapp in 1956 with 780 students? A. Ye

[1043] Q. So that Barrett wasn't necessarily bui only 450 students, was it? A. Would you—

Q. It wasn't necessary, based on any precedent i mentary school building, to build Barrett small, was it No.

Q. Now, Colorado Boulevard, which was adjacent playground at Barrett, is not an interstate freeway, A. Well, it is an awfully busy street. It is a six-lane way.

The Court: We will take notice that it is limited access expressway.

Q. All right, I have put on the easel what is ide in evidence as Defendants' Exhibit BF, which repr elementary school boundaries—

Mr. Creighton: 1964.

Q. (Continued) 1964, thank you. Do you recall, Johnson, whether when Barrett was built the Telle Steck districts which are represented on that map h same boundaries? A. I can't answer that.

Q. Do you recall whether Colorado Boulevard south of Barrett down in this area, what are the Tell Steck districts, was more or less busy? A. Colorado

vard south of Barrett—east of [1044] Barrett—Colorado Boulevard—was very busy.

Q. It was busy all the way down from north to south, was it not? A. Yes.

Q. It wasn't a constriction or an increase in traffic that was particularly noticeable near Barrett, was there? A. On Colorado Boulevard?

Q. Yes. A. Well, this was part of the new six-lane highway.

Q. But it comes all the way down past Teller and Steck schools, does it not? A. Well, they were not built at this time.

Q. Teller and Speck were not built? A. They had been built for some time before this was a six-lane highway.

Q. But their boundaries were not adjusted in order to overcome the difficulties of that busy street? A. Again, there are limitations with finances that have to be considered, too.

Q. And your consideration as a board member of ways to avoid traffic hazards—let me restate the question. As a board member, you were forced to consider ways to avoid traffic hazards all over the city, were you not? A. Yes.

Q. And some of the things you considered were stop [1045] lights? A. Yes.

Q. And fences? A. Yes.

Q. And overpasses? A. Well, not at that time.

Q. That hadn't yet been conceived? A. No.

Q. And special zoning, speed zoning? A. This came sometime in this period, I am not sure when.

Q. And all of these might be used to avoid the special hazards of a busy highway that goes through an elementary school district? A. And were.

Q. And were? A. And were.

Q. And could have been used at Barrett, couldn't they? A. Yes.

Q. Turning your attention to the construction of the new junior high school at 32nd and Josephine that was proposed in 1962 and the decision by the board not to build that junior high school, was this again in deference to what was supposed to be the majority view? [1046] A. Well, we were considering this as one of the factors.

Q. Was it a major factor? A. It was one of the major factors. However, also, you have to consider the city line there and the fact that a trunk line of business, a business area, was also developing very rapidly.

Q. That 32nd and Josephine Street site had been owned by the school district for the whole time you were on the board, had it not? A. Yes.

Q. And it was there in 1953 when the new Manual was built, was it not? A. Yes.

Q. Was there any reason why the new Manual was not put out there on that site? A. Well, the new Manual was conceived before I was on the board. I can't answer that.

[1047] Q. If the new Manual had been put there in 1953 when you were on the board, would it have been an integrated school? A. I can't answer that.

Q. Well, you were familiar with the racial composition of that neighborhood, were you not? A. This is true.

Q. It was predominantly white? A. Well,—I can't answer that. You were feeding from two areas.

Q. One area— A. If you were replacing the old Manual, you would be bringing two together and I couldn't answer it.

Q. There would have been a greater degree of integration if you had had the boundaries for the new Manual somewhere out here in Park Hill as opposed to down High and

Williams Street? A. We were not building with integration as our idea, of course.

Q. In the case of a proposed Stedman boundary change, in 1962, were you aware that at that time in 1961 prior to those proposals that Stedman was overcrowded? A. Yes.

Q. How were you aware of that fact? A. Well, we had studies.

Q. You had studies done? [1048] A. We had studies. Here you have shown me studies.

Q. Studies like the one in 406 that applied to elementary schools? A. Didn't you say Stedman? Oh, I beg your pardon. I'm thinking of Smiley.

Would you rephrase your question?

Q. Were you aware that—and I was going to say Smiley—Were you aware that Stedman was overcrowded in 1961? A. Yes, I'm sure we had studies made at that time, too.

Q. And you lived at 1955 Glencoe at that time? A. No, I lived at 2212 Ash Street.

Q. 2212. So you were in the Stedman district yourself? A. Yes.

Q. Were you aware of the changing racial composition of the Stedman area? A. Well, as I was in the school, I'm sure I was.

Q. And was the changing racial composition one of the reasons that you knew that Stedman was overcrowded? A. Yes. I knew that people were moving in, if that's what you mean. There were no studies made showing whether they were black or white.

Q. Did you at that time have occasion to go into Stedman School yourself? [1049] A. Yes.

Q. And did you go into Hallett School yourself? A. Yes.

Q. And Smith? A. Yes.

Q. Were you aware that Stedman was the most Negro school of the three? A. Probably.

Q. Now, you have testified concerning the Morey-Byers boundary change that was acted upon in April of 1962 that you were aware of the changing characteristics of Morey because of the changing apartment composition of the area? A. Yes.

Q. Turning your attention again to Exhibit AD, Defendants' Exhibit AD, which is a junior high school map for January, 1955, do you recall if there is any difference in this optional area between 6th and Speer Boulevard which existed in 1955 and the way it existed in 1962? A. I can't recall.

Q. Do you recall whether or do you know whether that area between 6th and Speer was an area of changing apartment dwellings? A. No, I can't answer that.

Q. You do know that that is the Country Club district, isn't it? [1050] A. I expect it is.

Q. And that's not a district of apartment houses, is it? A. No.

Q. That is a district of fairly stable families, isn't it? A. Yes.

Q. That isn't the area which—to which we would attribute the changing composition? A. No.

Q. In fact, we're talking about the area that's north of Morey, aren't we, when we're talking about the changing of apartment areas, north and west? A. And east. Yes, it was changing east, too.

Q. Do you have any idea of what kinds of people racially were moving into those areas? A. No.

Q. Did you have any idea at the time? A. No.

Q. But you were aware that the character of Morey was

changing. What did you mean by that? A. Well, I simply knew that there were less children because there were more apartment houses where children were not living.

Q. There were fewer children? [1051] A. There were fewer children.

Q. Turning your attention to the recruiting for Negro faculty members, when did the—you testified that the board began to become aware of this need. When did that awareness begin? A. I can't give you a date.

Q. Were you aware of the need in 1951? A. No.

Q. 1952? A. I can't give you a date.

Q. Was it fairly late, like, about 1960 or 1962? A. No, it was considerably before then.

Q. Do you have any idea what the names of the southern schools were which were referred to? A. No.

Q. Do you have any idea what kinds of contracts teachers coming from those schools were given? A. Well, they were given the same kind of contract another teacher would be given. We didn't have different kinds of contracts. Did you mean—

We had some teachers who were—

Q. Were you aware of the fact that for several years teachers coming out of what might have been considered untested schools were given substitute teacher contracts? A. We always were looking for qualified teachers and [1052] I'm sure that these would be the ones who would be given contracts. If there were others who we felt might qualify and yet we had not this real assurance, this may have happened. I wouldn't be able to say yes or no to that.

Q. Were you aware of the need to assign minority teachers in other than minority schools? A. At a certain time we very definitely tried to place teachers in all schools.

Q. There was a period prior to that time when minority

teachers were assigned primarily to minority schools, wasn't there? A. I can't say that to my knowledge.

Q. But you did become aware of a time when it had to be turned around to make a conscious effort to get them out of minority schools? A. We were making a very much more conscious effort to get teachers of all kinds in all schools.

Q. I'm going to turn your attention back to 1955-1956 boundary changes again, Mrs. Johnson.

We talked about capacity utilization. Do you recall how the conflicts between the figures I have given you and the purpose to maximize utilization capacity was resolved? A. Well, many factors were considered. I can't in each instance tell you how each one was resolved. I don't [1053] remember that, no.

Q. What other factors might there have been other than distance, transportation and utilization of capacity? A. Well, for instance, in areas where we had special education —this would take up a certain amount of room even though your pupil ratio was down for that school. As for instance at Morey we had at one time practically all of our special education for a certain age children located there. Now, this looked as though Morey was considerably underoccupied. And yet, actually, it was not so.

Q. The capacity utilization figures which you have take into account special education classes, do they not? A. Yes.

Q. So they accurately indicate the number of empty spaces in those schools? A. No, because there might be five children in a classroom and in another class there might be thirty. This would make it look as though you were not using rooms that were actually being used.

Q. Is it your testimony that space for 500 students ap-

proximately at Manual did not in fact exist because the special education classes in that number took up all that space? A. I don't say all that space. I say this accounts for the difference.

[1054] Q. It could account for the difference? A. It could account for the difference.

Q. Do you know that special education classes were held at Manual at that time? A. Yes.

Q. Do you know how many were held? A. No.

Q. Do you know how many were held at Cole? A. No.

Q. Well, how many children are there typically in a special education class? A. I don't know what the figure is today. At one time we said two percent.

Q. I'm sorry. Maybe I misphrased the question. It's about half the number in a regular classroom? About 15, isn't it? A. Not always.

Q. But it's typically 15 children per special education class? A. It may be a smaller size.

Q. Is it your testimony that all of the extra spaces that were pointed out to exist at Cole and Manual were in fact nonexistent because of special education? A. I don't believe I said that.

Q. Well, what percent of the available space that [1055] was in those schools was taken up by special education? A. I can't give you those figures.

Q. Some of it? A. Some of it, right.

Q. How do you resolve the conflict between the stated criteria for distance and the fact that all of the area above 29th Avenue is closer to Manual that it is to East? Wasn't distance one of your criteria for choice? A. Yes. It was one of the projections.

Q. How did you resolve that conflict? A. I wish I could remember all of the things that went into each of those resolutions. I can't.

Q. Are there any large natural obstacles in that area? A. No.

Q. No train tracks, are there? A. No.

Q. Only the City Park? A. Yes. That would be a natural—

Q. No big gullies or— A. No.

Q. —or things like that? A. No.

Q. No superhighways? A. No.

[1056] Q. How do you resolve the conflict between your stated criteria of public transportation and the actual fact that more public transportation went to Cole and Manual than it did to Smiley and East? A. I can't tell you. It was carefully considered but I can't tell you how this was done. I have forgotten.

Q. Turning your attention to Morey and Byers in 1962, do you recall that Morey was about 75 percent of capacity before the boundary change in 1962? A. It was low.

Q. And that it was about 76 percent the year after the change? A. I don't know those figures.

Q. If that had been the case, would that have been— That's not a helpful question.

How do you resolve the question of distance in 1962? Isn't it farther from those areas above 6th Avenue and 8th Avenue which were actually included in the boundary change to Byers than it is to Morey? A. Distance is not the only factor. This is only one.

Q. Well, assume with me, if you will that the school was underutilized in both years and went from 75 percent to 76 percent capacity utilization before and after the change and that it was farther from this area which was included in the change between 6th and 8th to Byers than it was to [1057] Morey? What other rationalization for the change might have been used? A. I can't answer that.

The Court: At these public hearings, were there speeches made and arguments made to the effect that this did have a segregating effect to change the boundaries in this manner?

The Witness: Yes.

The Court: Were these arguments made when the Barrett School was—

The Witness: Yes, and then there were refuting statements, too, by people in the community.

The Court: I was going to suggest that maybe at this time there was less consciousness on the board members as to the problems. I rather got that conclusion from what you said. That you didn't—You testified repeatedly that you never made a decision that resulted in segregation.

The Witness: This is true.

The Court: Was it a fact that this matter was not really considered in depth in those days?

The Witness: Well, up until the time of the Brown case, it wasn't considered at all. And for some time after that, we felt that we had—that we really didn't have this problem in our community. And it wasn't until shortly before Miss Biddick was appointed and the Voorhees Commission was [1058] established that we had a feeling that the school board had certain responsibilities.

The Court: So the first time you had some awareness of it was when it was pointed out that the quality of education was really perhaps inferior—

The Witness: It might be affected—

The Court: —in these minority schools?

The Witness: It might be affected, and we felt it was time for us to study this.

The Court: This is what impressed the school board members more than anything else?

The Witness: That's right.

* * * * *

[1061] * * *

Cross-Examination by Mr. Barnes (Continued):

Q. Mrs. Johnson, turning our attention back again to the 1956 boundary change I think you testified yesterday that you recall petitions presented by representatives of the minority community, Mr. Lorenzo Traylor or Mr. Lajean Clark or Mr. George Brown, is that correct? A. I remember petitions being presented. I don't remember who presented them nor at which time.

Q. But they were in relationship to those proposed changes, were they not? A. I think so. They presented many petitions at various times and I think there were some at that time.

Q. Do you recall also petitions from white parents? A. Yes.

Q. And were you the recipient of telephone calls and other requests from white parents about those boundary changes? A. Yes.

Q. And so in your attempt to achieve some idea of the consensus of the community, you were considering the wishes of the white parents, as well as minority parents, is that correct? A. This is correct.

[1062] Q. And were you able to— Did the calls which you received from white parents seem to you to reflect the majority opinion? A. No. No, we had many kinds of calls from many kinds of people, but there was more of a consensus. I think. And this is natural.

Q. There was more of a consensus in favor of the changes which were actually made than in favor of something else? A. I can't say that.

Q. What do you mean, there was more of a consensus? A. Well, more—I think more of the white community was in agreement that appeared to be in agreement in the black community.

Q. Now, there were some proposals in 1956 that black teachers would be assigned outside of the predominantly minority schools. Do you remember those proposals by Dr. Oberholtzer? A. Yes.

Q. Do you remember some protests or concern being raised by the Park Hill Improvement Association about those proposals? A. Yes.

Q. Did they come to board meetings and express those concerns? [1063] A. I don't remember that.

Q. The Park Hill Improvement Association at that time would have been an association representing a predominantly white neighborhood, would it not? A. At that time I imagine this was true.

Q. In 1956 and in 1957? A. I imagine so.

Q. So that there was a substantial expression of white concern about the placement of black teachers in white schools in those years, was there not? A. I don't remember that.

Q. I thought you said you— A. I remember that they came and—I don't remember that there was concern about placing Negro teachers in the schools.

Q. Wasn't there some concern by the white community that certain areas of town would be marked out as potential areas for black expansion? Didn't you ever have that feeling? A. Yes.

Q. And "yes," people expressed those concerns to you in phone calls and letters and by petitions? A. Letters primarily.

Q. So you were aware of the fears in the white community as well as those in the black community, weren't you? A. Yes.

[1064] Q. And you were aware that all of this had something to do with race, weren't you? A. Yes.

Q. And at the time that the Barrett proposals were made in 1959 and 1960 did you receive again petitions and phone calls and letters from white parents who were concerned? A. I don't remember that.

[1065] Q. So perhaps you did not receive— A. Perhaps I did. I really don't remember. We were constantly having letters and communications throughout the twelve years I was on the board from parents.

Q. Do you remember any expression of opinion by predominantly white neighborhoods about the Barrett boundary line, expressing the hope that it would be moved east of Colorado Boulevard? A. There was some discussion of this.

Q. There was discussion of it, but were there requests for it by representatives of the white community? A. I don't remember that there were.

Q. And there were requests for it by representatives of the black community, weren't there? A. There were.

Q. And in 1962 when the proposed plans for the new junior high school at 32nd and Josephine was considered, were there protests at that time from the white community? A. There were protests from many people, both by black and white.

Q. And there were a lot more witnesses joining in at that time. were there not, than there had been previously? A. I can't say.

Q. This was a time of increasing general public concern? [1066] A. This is true.

Q. And there were even representatives on the board, white representatives on the board, who began to express some concern about the race problem, isn't that true? A. We were all concerned with the race problem by this time.

Q. Was this a new concern? A. It was a growing thing.

Q. Now, in 1962, the proposed construction at 32nd and Josephine was not carried through. What were the criteria or the factors that were different in your consideration then than in the consideration of the building of Barrett in 1959? A. As I told you yesterday, the very numbers of children, with the pressure that made it imperative for us to build a new elementary school, and we built it where Barrett was located because the children were there. This was nothing that we had to look into the future to see. They were there and they had to be placed someplace.

Q. Well, that same problem existed for the junior high school? A. This is true, but by this time that area had become—by the time the junior high school was really being discussed, the area had become predominantly black. There was a greater awareness throughout the total country of whether or not you should build a school that was completely [1067] black, and the community was being listened to, and we felt that it would not be an acceptable thing in the community.

Q. Isn't it true that by 1962 representatives of the ma-

jority community, the white community, had begun to join in the concern in a major way? A. Yes.

Q. And that's what made the difference between '62 and '59? A. I think this is a total awareness of the total community that had grown.

Q. There were not large community movements in favor of the minority position in 1956, were there? A. Large?

Q. That is, that took in the white community and in which the white community participated? A. I imagine this is true.

Q. It is true that there were not? A. That there were not.

Q. Now, in 1961, turning your attention to the Morey case, do you recall a shooting incident there at Morey, in which a youngster was killed? A. Vaguely.

Q. Do you recall again an expression of white concern and protest about that incident? A. Vaguely.

[1068] Q. This was part of the background, this expression of concern was part of the background, that underlay your considerations in the Morey change, was it not? A. I doubt if this was part of the decision making.

Q. Well, throughout this period you had presented to you on each of the occasions I have raised positions on both sides of the fence, hadn't you? A. Yes.

Q. And those positions couldn't help but make you aware of race as a factor? A. This is true.

Q. So, although you may not have been intentially segregating on the basis of race, you were certainly not ignorant of the fact that there was race concern in these days? A. This is true.

Q. Now, in 1956 I think you testified that you were aware

that the population migration had been moving east across York and across the top of Colorado or across the top of City Park toward Park Hill, is that correct? A. Yes.

Q. That you were aware of that? A. Yes.

Q. And were you aware that the migration was not moving to the south from the Manual area? [1069] A. I—no, I think I was aware that it was moving our direction. More people were coming.

Q. Did you live on the 220 block on Ash at that time? A. Yes.

Q. And when you went downtown, you probably went down 23rd Street, didn't you? A. Probably.

Q. That's the major route to get into downtown from that part of town? A. Yes.

Q. And sometimes you would come home out 17th Street? A. Yes.

Q. You could tell just by looking down the street, 17th Street was predominantly white apartment buildings?

The Court: 17th Avenue, you mean.

A. Seventeenth Avenue.

Q. Seventeenth Avenue, right, that Seventeenth was predominantly white apartment buildings and 23rd was predominantly black? A. Yes.

Q. So, you knew the area around 17th Avenue was a white area? A. Well, it was a changing area, too. It really was. Those large homes just below York Street were being sold—

Q. We are talking about 1955-56. [1070] A. Yes.

Q. Was that area predominantly black? A. I don't know this.

Q. But you could tell the area along 23rd was predominantly black, couldn't you? A. Yes, and I knew the other area was changing.

Q. You have mentioned that you do not recall that there were capacity utilization justifications, with the exception of the special education element that you mentioned or that there were transportation justifications or that there were distance justifications for these 1956 changes, and that you were aware of the racial movement to the east and aware that it was to some extent less emphatic to the south. What possible reason could there have been for moving the boundary only to the east and not to the south? A. I was thinking about this last night, and the projections which you showed me yesterday probably did not include the fact that we were going to build onto Smiley Junior High, did they?

[1071] Q. The projections did not show the building proposed in the late '50s. A. Yes.

Q. No, I don't—I won't testify to what they showed back— A. Pardon me. Well, this would have been a factor in our consideration too.

Q. Is it your testimony then that this building was projected even though it is not shown on the projections? A. Well, I don't know what was projected, but we knew it was going to have to be done.

Q. It was going to have to be done even though there was empty space in Cole? A. Well, with the growth in the community in that area, we were not going to have any empty spaces eventually. Our plans were not for today and tomorrow. They were for five and six years hence.

Lois Heath Johnson—for Defendants—Cross

Mr. Barnes: That's all I have.

Cross-Examination by Mr. Brega:

* * * * *

[1077] * * *

Q. Now, in regard to the boundary changes in 1962 at Cole and Morey and Byers, you publicized your plans to make those boundary changes well in advance, too, did you not? A. Yes.

The Court: What year are you talking about?

Mr. Brega: 1962, Your Honor, at Cole, Morey and Byers.

[1078] Q. And you did that so that the community could come in and express their opinion to you? A. This was always done.

Q. As a matter of fact, the board had no legal obligation to consider the opinion of the community if it didn't want to, did it? A. It wouldn't have been a very wise board if they had not.

Q. But it was your job to establish the boundaries, was it not? A. The decision had been made by us.

Q. But you wanted the community to be involved in it? A. This is right.

Q. Now, at the same time that this boundary change was being proposed in 1962, there were 17 other boundary changes being proposed for the junior highs in Denver, according to Exhibit 405, which is now in evidence. Now, were you people concerned about those other boundary changes too? A. Once you change the boundary of any

one school, it is affecting all the schools, and so we had a concern about all of these changes.

Q. So there were probably people who were in and communicated with you people about those changes too? A. Probably, but probably not in as large numbers.

Q. That's right, because it wasn't as large an area [1079] of change. A. That's right.

Q. But the school board—their attention wasn't centered only on one little area in Denver, was it? A. No, we considered it all.

* * * * *

[1080] Q. And so all of these seventeen changes were considered and you were receiving letters and calls from people about all of them? A. This is true.

Q. About their concern of whether it should or shouldn't be done? A. This is true.

Q. Now, as you were developing this area in the northeast, Denver was experiencing a substantial annexation during these years? A. Yes.

Q. That you were on the Board, weren't they? A. Yes.

Q. Did you have anything to say or approval for the annexations that were made? A. Now, how do you mean this?

Q. Well, when Denver annexed anything, did the Board have the right to say, "No, you can't do it"? A. No.

Q. And when it was annexed, you had the job of putting those children in school? A. Immediately.

Q. As a matter of fact, many of those annexations were taken to court to be contested? A. This is right.

[1081] Q. And yet during this period of time you still had to provide an education? A. That's right.

Q. And Denver was paying the cost, was it not? A. That's right.

Q. And some of the annexed areas were later deannexed by court order? A. That's right.

Q. And then you had to adjust the school back again? A. Yes.

Q. And you didn't have any advance notice really of what the City was going to do next as far as annexation? They didn't tell you a year in advance or two years in advance in where they were thinking about going? A. No, but the City was always very cooperative.

Q. Except, they did it— A. It was done.

Q. And over your objection on some occasions? A. I don't remember our objecting.

Q. So the School Board during this period of time was concerned not only about northeast Denver, but with the annexations in southwest Denver, and the school population there far exceeded the capacity in some of your years? A. This is right.

Q. And you were trying to build new schools out there [1082] at the same time you were building them at Barrett and in the east? A. Yes, sir.

Q. And in southeast Denver, you had the same problems going on at the same time? A. This is right. These were the two areas of greatest growth.

Q. And did you have parents communicating and contacting with you about the facilities in the southwest and southeast parts? A. Constantly.

Q. The same as you were having in the northeast part? A. Yes.

The Court: Why don't you disagree with him, just for a change?

The Witness: He is so right.

Q. What I am trying to show here is that the School Board wasn't just sitting on a little area of Denver and that was the only problem that you had during this period of time. You had finances, you had annexation, and you had capacity growing by leaps and bounds in the schools? A. Yes.

Q. And the projections, some of which you had had shown not to be right because the school population was increasing more than the projection showed? [1083] A. More rapidly, that's right.

Q. Now, when we talk about the teacher situation, as I understand it, the Board of Education approved the appointment of a teacher? A. Yes.

Q. And in April I believe you generally approved the teachers contracting for the next year; is that right? April or May? A. Yes.

Q. As a matter of fact, when this would come in there would be a list of maybe five or six or seven hundred teachers that were presented to the Board at a meeting, would there not? A. There would be.

Q. It said the name and maybe the address, but it doesn't say anything about race or ethnic background, does it? A. No.

Q. And the Board didn't know whether you were approving a white or a black teacher or some other kind? A. No.

Q. At the time that you had resignations, they were always submitted to the Board, were they not? A. Yes.

Q. And you had a substantial turnover in teachers, did you not? [1084] A. Yes.

Q. And these teachers that were submitted, you didn't know what their race was, as far as their leaving the school? A. No.

Q. Or where they had been, really? A. No.

Q. And the teacher problem was a substantial problem, was it not? A. Very grave, all over the country.

Q. You were trying to serve the increased capacity, and at the same time there were not a sufficient number of teachers available for you to—that would stay long enough for them to be permanent? A. Qualified teachers.

Q. Now, did the Board itself have anything to do with the assignment of the teachers throughout the school system? A. No.

Mr. Brega: No further questions, Your Honor.

Redirect Examination by Mr. Ris:

Q. Mrs. Johnson, I would like to ask you if there was one other factor that entered into boundary changes from time to time that we haven't previously discussed, and that involved the frequency of such changes. A. Well, you don't want to change your boundaries every [1085] year, because this is disruptive to the children, so we tried to make our projections for not less than five or six years in advance.

Q. So that no child would be displaced. A. So that a child would not be displaced.

Mr. Ris: Thank you, that's all.

Recross-Examination by Mr. Barnes:

Q. Mrs. Johnson, I think you said when you were planning for the construction of Barrett, you were thinking of taking care of the children who needed help now, is that correct? A. Yes.

Q. And when you were planning for the 56 boundary changes, you were thinking of children who would need help in the future, is that right? A. I think we had a little more time to plan.

Q. You always had both of these considerations in mind? A. That's right.

Q. It wasn't an either/or thing? A. That's right.

Q. The way you balanced these things is in part an attempt to satisfy a majority opinion? A. No, this was not the case.

Q. You solicited a consensus in the community on each occasion? [1086] A. This is true. This was an opportunity for communication between the Board and the community as well.

Q. But you were trying to get community expression on each one of these changes? A. That's right.

Q. Sometimes with regard to present changes and sometimes with regard to future changes? A. This is right.

Q. Did you ever make a decision which you thought was counter to the majority opinion? A. I can't answer that question.

Q. You don't recall ever making such a decision? A. I don't recall doing this.

Q. And the majority opinion was white, was it not? A. If it were stated.

Q. Did you have occasion in 1956 to verify or check or look into the proposals by Mr. Traylor and the investigation and facts that he suggested to you about capacity and distance and other things? A. Yes, we spent a great deal of time.

Q. Did you find those facts to be wrong? A. No.

Q. Did other people present— A. Not always.

Q. Excuse me, I didn't mean to interrupt you. [1087] A. Even when people came in and talked to us, they didn't necessarily have the answer to the problem any more than we did, and they didn't present answers to the problems many times.

Q. Well, in this case, they did suggest changing the boundaries farther to the east, did they not? A. Some suggestions were made.

Q. They suggested a solution which would have resulted in the integration of both Cole and Manual? A. They suggested this be attempted.

Q. They had facts to support their suggestions? A. They had statements to this effect, yes.

Q. Were there representatives of the white community with the same kind of long, detailed factual statements? A. Oh, yes, yes.

Q. What did they show? A. Well, these were the things that we had to weigh. They were not—they were sometimes in conflict and sometimes not.

Q. And you eventually decided in favor of those decisions which— A. We eventually reached a decision on our own.

Q. Talking about the annexations around the city and the other constructions and notices and phone calls and

letters you received from parents in those cases, in how many of [1088] those cases was race a question? A. Very seldom.

Q. You were notified of people's racial concerns in 1956, weren't you? A. Yes.

Q. And in 1959? A. Yes.

Q. And in 1962? A. Yes.

Q. But you were not notified of racial concern in the annexation of the southwest Denver area? A. No.

Q. So, really, the only time you were aware and had to consider the very sensitive problem of race was in the situation we have been talking about? A. Yes.

Q. And you were not ignorant of the difficulties connected with this problem? A. No, by this time we were aware.

Q. The only thing I can't understand is how, if there were these serious financial problems, it was possible for the district to avoid the use of space in Cole and Manual. If these financial problems were really serious, why wasn't that space used? A. Again, as I told you, we were not planning for just [1089] today. We still had to continue to build, and when we were building a building, some of our buildings were not fully occupied when we completed them, in the southwest, I think also in the southeast area, but we knew that within two or three years they would be, and it is far more expensive to go ahead and build a small building and then have to add to it.

Q. Was there ever a time in your tenure on the Board when Manual was full? A. I can't answer that. I believe there was, but I can't answer it for sure.

Mr. Barnes: That's all.

Mr. Brega: Nothing further, Your Honor.

Mr. Ris: Nothing further.

The Court: When the new Manual High was built in '52, in planning the courses studied, did you more or less abandon the old concept that this was a manual training high school?

The Witness: Yes.

The Court: So it became in its approach, theoretically at least, just the same as any other high school?

The Witness: Exactly the same.

The Court: College preparation?

The Witness: Everything was offered in each school in the same way.

The Court: There was no emphasis on manual training?

[1090] The Witness: No, sir.

The Court: The courses were—traditionally, that's what this school was?

The Witness: Originally, this is right.

The Court: Youngsters went there to learn a trade?

The Witness: That's right, and this was changed.

The Court: This was back in the early days, I suppose.

The Witness: By this time, educators were beginning to—

The Court: The twenties and thirties.

The Witness: By this time, educators were feeling that everybody needed to know how to read and write and express themselves, and we needed certain background things.

The Court: I expect that all the high schools had trade courses?

The Witness: Yes.

The Court: By that time I think East and West and South—

The Witness: All had some facility.

The Court: Machine shop or printing or this sort of thing?

The Witness: Yes.

The Court: But before the building in the twenties of East, West, and South, I think that most of the trade [1091] training occurred at Manual, didn't it?

The Witness: I think this is right.

The Court: Do you think that that tradition has had anything to do with the subsequent attitude at Manual?

The Witness: Well, the parents—this, of course, was before I was on the Board, the planning of Manual, but it is my understanding that the parents were very anxious to have the same offerings in the school located there as were offered in all of the other schools, with no emphasis—

The Court: I would think so.

The Witness: —on the trade.

The Court: Thank you.

Anything further?

Recross-Examination by Mr. Barnes:

Q. Mrs. Johnson, isn't it true that there was a heavier emphasis on vocational training in the new Manual than

there was in the other schools in the district? A. I think this is probably true and that many people wanted it and took it, and there were certain areas of—that children could make their own decision as to what the children were going to take, but there was no emphasis from the standpoint of offerings, because everything was offered at Manual that was offered any place else.

Q. They kept the name the Manual Training High School? [1092] A. Yes.

Q. The booklet that was prepared by the District, which has been offered as Plaintiffs' Exhibit 356, which is "The New Manual," could I ask you to read the sentence on page—the pages aren't numbered— A. "For roughly three-fourths of the student body, college is virtually an impossibility."

Q. And that represents the consideration for Manual when it was being built, doesn't it?

Mr. Brega: I will object to that. She said she wasn't on the Board at that time.

The Court: Well, she may have some information. We will let her say whether she can answer it or not.

A. Well, I am sure it was a consideration. It should have been a consideration.

Mr. Barnes: That's all.

The Court: Well, if you had your choice between Manual and East, Manual and GW, and you were preparing for college boards, you wouldn't go to Manual, would you?

The Witness: Well, interestingly enough, Judge Doyle, at one time there were more scholarships available at Manual, and we were working on this and trying to get them taken up, than any other school in the community. So if I were looking for a scholarship—

The Court: I didn't ask you about that. I asked [1093] you about preparation for college boards, which is a very formidable task for a youngster. It is something he concerns himself with.

The Witness: Yes.

The Court: He wants to go to a university or college.

The Witness: I would go to East. There are just—the opportunities were there, but they were not always taken up.

The Court: Well, I know we always heard of East as being a showplace, though.

The Witness: And it was.

The Court: For that purpose.

The Witness: And it was.

The Court: And finally, GW?

The Witness: Yes.

The Court: Because they did emphasize this.

The Witness: This is right.

The Court: And probably their level of scholarship is much higher, wasn't it?

The Witness: I am sure of this.

The Court: Their standard was higher?

The Witness: Yes.

* * * * * *

[1094] * * *

PALMER L. BURCH, called as a witness by the defendants, being first duly sworn, on his oath testified as follows:

The Court: Please be seated and give us your name and address.

The Witness: Palmer L. Burch, 395 Fairfax, Denver, Colorado.

Direct Examination by Mr. Ris:

Q. Mr. Burch, so the record will reflect your race, are you white? A. Yes, sir.

Q. How old are you, sir? A. I will be sixty-three next month.

Q. You are a resident of the City and County of Denver? A. Yes, sir.

Q. How long have you resided here? A. I have resided in Denver since 1924.

Q. Could you tell us generally the areas in which you have lived and the years in which you lived in those areas? A. While I was—before I was married, which was 1946, I lived with my mother generally in south Denver, 231 Logan, 12 South Washington, 372 South Williams, and 459 South [1095] Pennsylvania. At the time I was married, I bought my first house at 1770 Roslyn Street near the airport, and in 1950 I acquired my present residence at 395 Fairfax, where I have lived since.

Q. Do you have any children? A. One.

Q. A daughter? A. Daughter.

Q. And she attended the Denver Public Schools? A. She attended three Denver Public Schools: Carson Elementary School, Hill Junior High, and George Washington High School.

Q. Would you outline briefly the experience you had in public life and in your business life prior to 1959, which you felt would be of some value to the School District? A. When I came to Denver, I attended Central Business College during the year 1924 and graduated therefrom on the day before Christmas 1924, secured a position and began to work the day after Christmas, 1924, for a firm of public accountants, particularly income tax work. I was with that firm for approximately six years, at which time I became associated with the firm of Horace W. Bennett & Company, real estate ownership, management, investment, and continued with that firm until my resignation in the spring of 1968.

During that period in 1946, shortly after I was [1096] married, I was approached by two individuals, both of whom are now deceased, to urge me to stand for designation as a member of the House of Representatives of the State of Colorado, which came as a surprise to me, because while I was aware of government operations I had never participated therein. And I immediately said, "What do I know about being a representative," and, obviously, had no experience. But in talking it over with my wife she said, "If that's your desire, Palmer, go to it." So, I gave my consent to stand for designation.

I was designated as a candidate. I participated in the primary election, and in the fall of 1946 I was elected as a member to the House of Representatives. I knew nothing about the legislative process. As a matter of fact, I had to ask where the House of Representatives was. But in those days we had a session, biennial sessions, and in 1947 we had 108 days in session and passed a few laws, and I might say I was so unaware of the legislative process that I did not introduce a single bill.

In 1948, I learned to like the process, I guess. I ran for re-election, and was defeated, and in 1948, though—I happened to be a Republican—in 1948, no Republican was elected in Denver. That was the year when Mr. Dewey was elected in September but defeated in November.

In 1950, I ran again for the House of Representatives and have been continually a member of the House of [1097] Representatives, with the exception of one year. In the year 1958 I ran for Governor of the State of Colorado, obviously was not elected, and returned to the House of Representatives in 1960, where I still hold.

[1098] Q. Then you ran for the school board in what year? A. I ran for school board in May, 1959.

Q. You were elected and took office in May of that year? A. Yes, sir, for a six-year term.

Q. Now, before going on the school board, did your experience in the legislature revolve around any educational matters or financial matters? A. Yes, the State Legislature is much concerned about educational matters, particularly with the financing thereof and all powers and duties—all powers, rather, of school boards are derived from acts of the legislature. During the year 1951—and I state frankly I knew nothing about schools in 1947, the year I served—but beginning in 1951 with the growing problems of education, not only in Denver but through the whole state, I became familiar with the problems of public schools, their organization, the problem of school districts and consolidation and the problems of financing schools.

Q. And have you since that time been active in financing matters in the General Assembly? A. Yes, sir.

Q. Have you served on any committees involving finances? A. I have; beginning in 1951, I was a chairman

or vice-chairman of the committee on appropriations, which is now known as the George Bundy Committee. In 1953 I became [1099] chairman of the house finance committee and in 1955 and '56 I was chairman of the joint budget committee, and in 1958 and '59 I was a member of the—of both the appropriations and finance committees and, since 1961, after my service on the Board of Education, I have consistently been a member from 1961 to date of both the house finance and house education committees. I have dropped my membership on the appropriations committee.

Q. You served one term then on the school board, 1959 to 1967? A. I served one six-year term and was reelected to a short term in 1965. So I served a total of eight years.

Q. When you went on the board in 1956—rather, in 1959, at that point in time had you had any previous experience at all in school administration? A. No, sir.

Q. Was it then necessary for you to acquaint yourself with the general operation of the school district? A. Yes, sir.

Q. Among the matters that you had to acquaint yourself with, did you inform yourself as to the matter of school boundaries; establishment and changes of boundaries? A. Well, it came very shortly after I was on the board—elected to the board. It became obvious that the present status of the school construction was called to my attention [1100] and at that time there was under construction three high schools, George Washington, Thomas Jefferson and Abraham Lincoln High Schools, which were scheduled—projected to open for business in the fall of 1960. And because of the changes that would take place in the lives of the children that were going to attend them, one of the first matters that came to me for my decision

and participation with respect to districting was the establishment of the attendance districts of George Washington, Thomas Jefferson and Abraham Lincoln High Schools and the attendant adjustment of the district high school districts which the children who were assigned to those new districts had formerly attended, so I became relatively—this happened in the fall of 1959, so that one year's notice could be given to the interested parents.

And on that I quickly ascertained the manner in which school attendance areas—what we call subdistricts of the district—were established and developed.

Q. Did you find that there were various factors and elements considered in determining the establishment or changes of boundaries? A. Yes, sir.

Q. Were you present during the entire testimony of Mrs. Johnson? A. Practically all of it; yesterday afternoon and this [1101] morning, yes, sir.

Q. Did you hear her testimony as to the various factors considered? A. Yes, sir.

Q. Would you generally agree that those factors were of consequence? A. Yes, I would agree generally. I would perhaps be somewhat more specific. In other words, the school board of Denver, the school administration of Denver had policies and I found that the final act of fixing high school boundaries devolved upon the Board of Education. In other words, the minutes of the board would show that the boundaries of the three high school districts and all the others who are, in effect, a mete and bounds description; that likewise this was true of the establishment of junior high attendance districts. But, with respect to the boundaries established for elementary districts, I found that they were an administrative matter; were never a matter of the record vote of the board.

In other words, in no place, to my knowledge, in the minutes of the meetings of the board, was there ever any metes and bounds descriptions of an elementary district and only occasionally was there a call to me or a—an appearance by the board of someone protesting an administrative change of an elementary district.

Q. Did you have contacts with members of the [1102] community concerning junior high and high school changes? A. Yes, sir.

Q. Both in person and by letter? A. Both on telephone and appearance and by letter, but more importantly by appearances of various ones before the Board of Education itself. Because the proposed boundaries of a district were always laid out for study, became available, and at a school board meeting, people were allowed to express their views through the traditional practices of the school board, designated as audiences.

Q. During your term on the board, Mr. Burch, do you know of any instance in which a child was refused the right to attend the school in the subdistrict in which his residence was located because of race or color? A. No, sir, not a single instance.

Q. When you came on the board in 1959, would you tell us what the policy of the board was in considering factors of race or color in connection with boundaries? This was after Brown against School Board in 1954, was it not? A. Well, I was aware, of course, as a member of the legislature and presumably an intelligent citizen who keeps aware of what's going on in this country of the Brown versus The Board of Education decision, reached in 1954.

Being aware of the constitutional provisions of the State of Colorado, which provide that no distinction or [1103] classification of pupils shall be made on account of race

or color, I was aware and sincerely believed that the schools of Colorado were not in any way operated by de jure segregation. Every school, to my knowledge, in this state, every public school in this state is open to enrollment by any child living within the boundaries of the district or the subdistrict as the school district—

* * * * * *

[1104] * * *

Q. Could you now restrict yourself more to what the position of the board was or the school district in Denver was when you came on the board in 1959 with respect to race or color or, as you ascertain it to be? A. I would state that I was aware of the public policy of the state with respect to education and I found that the Denver Board of Education's policies were in accordance with those of the public policy of the state.

Q. In 1959 in connection with boundary matters, were there any statistics available to you as a member of the board showing the racial or ethnic composition of the various schools or various neighborhoods in the district? A. No, sir.

Q. Were there any such figures or statistics made available to you during the years 1959 to 1964? A. Yes, sir, the first time—

Q. What time? A. The first time that I received any official figures with respect to the racial and ethnic composition of the Denver Public Schools was subsequent and immediately following the presentation of the so-called Voorhees Report, the [1105] study on equal opportunities in the Denver Public Schools.

Q. That was in March— A. At that time it became— I then learned for the first time the composition of oriental,

Negro, Spanish surnamed and Anglo in terms of percentage.

Q. Was that in March of 1964? A. Yes, sir.

Q. Now, as a member of the community, Mr. Burch, were you aware of the racial shift in population particularly in Northeast Denver during the '50s and '60s? A. Yes, sir, I was.

Q. With respect to the establishment of the senior high boundaries and before they opened in 1960, were there hearings held with respect to the specific boundaries with people permitted— A. Of those schools?

Q. Yes. A. Yes. In other words, the Board of Education operated in public meetings and you could—in other words, when a question came up for final decision, the discussion, the questions—the audiences, the comment and whatnot, you could call that a hearing although it was technically not a hearing in a formal sense, but people were heard.

Q. With respect to the Barrett School, had the plans for that already been formed by the time you came on the [1106] board in 1959? A. The decision to build a school and the order to go ahead on preliminary plans had been adopted before I came on the board. I did participate in the approval of final plans and the awarding of the contract for construction.

Q. Now, with respect to the testimony of Mrs. Johnson, you heard, concerning the Stedman situation in 1961 and 1962, are there any other facts that you could add to that to enlighten the Court? A. No, sir. Stedman—some of this will be from my memory, but Stedman School in 1961 had a capacity of approximately 600 and enrollments of approximately 600. By 1965 Stedman School, with the same capacity—its enrollment had moved up approximately to

900. In other words, it was on double sessions. And it was true, other schools also changed in enrollment population. But the situation with respect to Stedman and with respect to Hallett and Smith, all of whom were, by 1964, having attendance in excess of capacity, to me, it was intriguing that that occurred at a time when there was no additional construction in the area.

In other words, in other words, in 1959, when I came on the board, the Stedman subdistrict was wholly built up. There wasn't any vacant property. There was no new construction. And yet, with essentially—there had been a few houses built—but essentially the same number of [1107] houses in the area, the boundaries of the district unchanged. The population moved up by fifty percent, and of course this was a unique situation with respect to any elementary district in the city.

Q. Was that anticipated by the board at the beginning of that three-year period? A. No, sir, I had no—I assume that that was one of the schools that we would not have any problems with respect to double sessions and over-attendance. It was a stabilized area from the standpoint of construction.

Q. Now, with respect to the Stedman, Hallett, Smith area, during the '60s, and the decisions as to whether to make any additions or to add mobile units, could you advise the Court as to what the history of that was? A. Well, the growing overpopulation of the schools with respect to the facilities there began to intensify itself in 1963 and the administration and the board began to give it attention. In 1965 the recommendation was made by the superintendent that we build an addition to Stedman School, approximately 90 capacity, as I recall it; three classrooms and half a classroom to provide for special education and utilize

the library. And an addition to Hallett School of six classrooms, 180. That would then—with respect to Stedman, that would provide capacity in excess of 700. And the further recommendation was made that [1108] the excess number of children to keep them from going on double sessions or continue on double sessions should be transported to other schools.

The Court: This was in 1965?

The Witness: 1965.

And the board adopted a proposal for the construction of an addition to Stedman School by a vote of 5 to 2, with two members objecting and five supporting. The board unanimously then adopted the recommendation to transport well in excess of a hundred—I would say between 125 and 150—children of all grades, first through sixth, from Stedman School to Carson School, to Steck School, to Evans School, to Stevens School, and I think there was one other.

Q. What was the ethnic predominance of those schools? A. They were preponderantly Anglo schools.

Q. Would you tell us about the mobile unit situation? A. With respect to Hallett, again, the addition to Hallett was approved by the same split board of the vote, 5 to 2.

Q. The same year? A. In the same year. It was larger—it was a larger addition because we had a larger site at Hallett. With respect to Smith School, which was more level populated with respect to capacity than either Hallett or Stedman, as a result of a questionnaire, discussions, not with the [1109] board, but with the staff as the result of a questionnaire submitted to the families, parents of the children attending the Smith School, by a great major-

ity they elected that they would prefer to have additional mobile units installed at Smith rather than to have transportation, and on that basis the Board of Education authorized the acquisition of additional mobile units at Smith School.

Q. Had a similar questionnaire been submitted to the Stedman parents? A. Yes, sir.

Q. With what results? A. Not as preponderant as it was in Smith with respect to transportation but—in other words, on an answer it was not as well framed, as I recall it. But, with respect to Stedman, some people objected to having an addition and preferred busing. Some people wanted the addition——an addition large enough to provide no busing, and some said addition and the Board of Education took the latter, building a modest addition, increasing the capacity of the school modestly and busing the balance. The result was, when the addition was finally completed, which I believe was the opening of school in—I can't recall whether it was the beginning of the semester but the fact of the matter was that Stedman then reverted to a non—in other words, it had a capacity for the children there and the rest were bused. [1110] There was the elimination of double sessions, is what I want to say.

Q. Now, I direct your attention, Mr. Burch, to 1962 and the matter pertaining to Cole, Morey and Byers boundary changes. Do you recall that particular event? A. Yes, sir.

Q. And to what extent, if any, were there any racial or ethnic considerations considered by the board or you individually in making those changes? A. By me individually, none. By the board, my best observation, none. The question came up because of excessive enrollment at Cole Junior High School and it being the furthest northeast junior high school. A question of decreased enrollment—

in other words, enrollment below capacity at Morey, and the recommendations of the staff were that we extend the boundaries of Morey northward to accommodate the overpopulation existing at Cole. Then, as Mrs. Johnson has testified, you don't modify only one junior high or only one boundary. They need to look at the boundaries between Byers and Grant and look at the boundaries between Byers and Merrill. And it came—this junior high—as a package, and the final resolution of the board was to move the boundaries of Morey northward so that some of the enrollment of Cole could come to Morey; to move the boundaries of Morey [1111] southward—or northward, rather, so that capacity of Byers was not running full; that children attending Morey could attend Byers; to move the boundaries of Byers so that children attending Byers could attend Grant and Merrill.

In other words, the chess you made on seeking to balance the attendance and the prospective attendance because in a junior high school you have to take into account not only those now attending it but those in the fourth, fifth and sixth grades in being—who will be attending in the capacity, and—

[1112] Q. Now, in connection with these— A. And that was the consideration so far as I was concerned and I am sure the Board, that the action taken was to reduce the overpopulation at Cole, and I think the record will show that the overpopulation of Cole did go down. Strangely enough, the population of Morey did not increase.

Q. In connection with the staff studies that you have mentioned and considered prior to making this boundary change, did any of those studies reflect or show or give you the racial or ethnic composition of the various neighborhood areas involved? A. No, sir, we held studies on

changes in junior high enrollment which were always based on numbers of children and in no respect whatsoever in respect to race or ethnic derivation.

Q. Now, with respect to the plot of ground at 32nd and Colorado Boulevard and the junior high suggestion that we discussed in 1962, the decision was made not to proceed any further in consideration of a new building at that point, is that correct? A. Right. That resulted from a publication which I see here, a study of school boundaries and population, and the recommendation by the Superintendent that consideration be given to building a junior high school at 32nd and Colorado Boulevard, and that was first released to the public and the [1113] Board in February of 1962, and once again was available for discussion, both the Board and public, and that was the first time—

Q. What was the public reaction to that? A. That was the first time that I became aware of the opposition of organizations, CORE, NAACP, B'Nai B'Rith, and, in other words, the civil rights, you might say, organizations. That was the first time that they appeared with a determined opposition to any proposed project in public schools.

Q. And there was substantial unanimity among these organizations? A. There was, sir.

Q. Was that the first time this appeared? A. First time, yes.

Q. Did the events surrounding that particular suggestion also lead to the appointment of the Voorhees Committee? A. In other words, that was the first time. In addition to the objections by the civil rights organizations, and bear in mind they were not exclusively Negro oriented, CORE and NAACP and B'Nai B'Rith, Sheldon Steinhauser's organization, they were certainly not exclusively black, but they came in for the first time then. For the first time,

the question came up that in a school which they claimed would be de facto segregated that inevitably and as a matter of course the quality of education would not be the same as other schools, [1114] and it was on that basis then that the Board was—it was suggested that the Board authorize appointment of a committee, and the committee was appointed and given the title, "A Committee for the Study of the Equality," the equality of the educational opportunity in the Denver schools. That was the first time it came to my attention that the quality of Denver Public Schools was not—that happened two years or three and a half years after I came on the Board.

Q. After the Voorhees Committee report was made, did you study it? A. Yes, sir.

Q. That led to the adoption of Policy 5100? A. As a direct result of the Voorhees report was the adoption of Policy 5100, which for the first time put into the policy the words "racial and ethnic consideration."

Q. Plaintiffs' Exhibit 1, is that the copy of the Policy 5100? A. Yes, sir.

Q. Is that the first step that the Board had ever taken action concerning— A. Yes, that is the first time, yes.

Q. Now, I will direct your attention, Mr. Burch, to certain boundary changes in 1964, and do you recall what changes were made with respect to Gove at that time, sir? A. Yes, sir.

[1115] Q. Would you state what changes were made then and why. A. Well, if I may go back a little back in 1961, Jackson Fuller became a member of the Board of Education. He ran for the Board in 1959, when I was first elected. Jackson was a resident of Park Hill, living at 2090 Ash, as I recall it, and immediately Jack Fuller came to complain about optional areas and particularly

Optional Area A as between Smiley-Cole and East-Manual. He had valid reasons. He was constantly saying we should abolish them, all of them.

Now, we—the Board did not see fit to do that until after the Voorhees report was in. The sixty-four changes to which you refer, No. 1, we changed the boundaries as between East and George Washington High School, extending the boundaries of George Washington north on Monaco—I believe it was Monaco. Anyway, a substantial part of the area out by the airport came into the George Washington High School District, and for the first time that was to achieve a degree of racial balance.

At the same time, we abolished the optional area as between East and Manual and Cole and Smiley and established a firm boundary, as I recall, somewhere around Fillmore Street, and thereby children west of that went to Cole, east of that went to Smiley.

At the same time we brought Gove, a relatively small school, the smallest junior high school in the district, [1116] we fixed its attendance boundaries where it drew children from north of City Park. I don't remember the precise boundaries, but Gove's boundaries for the first time extended northward, west of or north of City Park, bringing children in that—well, we will say 32nd and Harrison or Garfield—they went to Gove, and the 1964 boundaries, again, the change in the boundaries at Gove, was the result of the Voorhees report to achieve a degree of racial balance.

Q. Were the children north of City Park assigned to Gove predominantly black, do you know? A. To my best knowledge, yes.

Q. Did that achieve some integration into Gove then? A. Yes.

Palmer L. Burch—for Defendants—Cross

Q. Then it was about in 1964 you began to get your first racial figures from the Administration? A. Well, I never received racial figures from the Administration. They came out in the abstract, as a result of the Voorhees report.

Q. And after that, did the continuing studies thereafter, where it was pertinent, contain racial and ethnic figures? A. Yes, continually thereafter used statistics, and for the first time began to give percentages on the various schools.

Q. And you had a boundary change for Kennedy in January, [1117] 1966? A. Yes, that last boundary change I participated in was the construction of the John F. Kennedy Junior-Senior High School, which necessitated a change in the boundaries of Abraham Lincoln High School and Kunsmiller and Kepner Junior High Schools, and people came in to protest this because that occurred after the annexation of Fort Logan and Centennial—some Centennial annexation—which changes the pattern of attendance from Lincoln to Kennedy, and the question of public bus service of high school kids arose at that time. We finally resolved the boundaries and everybody went presumably away happy.

* * * * *

[1117] * * *

Cross-Examination by Mr. Greiner:

Q. Mr. Burch, concerning your eight years that you served on the School Board, were you aware of the policy of the School Administration, first of all, with respect to the approvement and hiring of minority teachers? A. Not specifically, sir. In other words, each—again, if I may elaborate a little, again, the Board is governed by state law. They have to hire teachers, and as you know, the teachers are on probation, probationary contracts.

Every [1118] teacher has to sign a contract. Then they become tenure.

Q. That's a three-year probationary period? A. Yes, the state law provides that teachers shall serve—every teacher, even a new one, must have a contract. The contract then is renewed for three years, and at the end of three years, if a teacher's service has been satisfactory, they then have what we call a tenure contract.

Q. That's t-e-n-u-r-e? A. Yes, sir. I was not aware, and, of course, the state law requires that all teacher contracts be approved by the 15th of April, so the first time I participated in, you might say, the hiring of teachers—the Board obviously never interviews teachers and it doesn't, unless they specifically ask, know where they came from—but in April of 1960, a great long list of what was called a personnel report, "We recommend that the following teachers achieve tenure," and so forth. It was not until 1962, the 32nd and Colorado business, that I turned my attention to find out how many—how many Negro teachers were in the Denver Public Schools, how many Hispanos or how many Orientals, and at that time is when I turned my first attention to finding out the number.

Q. What did you find out? A. I found out there were not too many, and in asking—

Q. Do you recall how many? [1119] A. No, sir.

Q. Do you recall the schools to which they had been assigned? A. No, because, again—

Q. Did you make inquiry? A. Again, just a minute—

Q. Pardon me, Mr. Burch, but if you will just respond to my questions, this will move along a lot faster.

Did you inquire as to where the minority teachers had been assigned? A. No, sir.

Q. Your study took that not into account, is that correct? A. No, sir.

Q. All right, now, do you recall what proportion of the schools' teachers overall throughout the School District were minority and what part of 1962 was this? A. Well, it will be at the time the personnel—when we finally approved the teachers.

Q. In the spring of '62? A. Indicated they wanted to sign contracts.

Q. How did you go about finding out this information? A. I asked the superintendent in charge of personnel the number of minority teachers that we had in our public school system.

[1120] Q. That was Howard Johnson? A. That was Howard Johnson.

Q. And did he tell you he didn't know that information? A. No, sir, he gave the specific answer, as I recall. The time I first asked, it was 256—

Q. Did he have the figure right on the top of his head? A. No, sir, in other words, he could not respond to my question. In other words, he—it was—I asked that, and it was subsequently given to me, "I want to know how many Negro teachers, how many Hispano or Spanish surnamed, how many Oriental," and I finally got the information with respect to the total as of the April 1962 approval of the contracts.

Q. How long did it take to get that information? A. I would say that it took—meetings at that time—School Board meetings at that time were on Thursday afternoons. I would say it took three days.

Q. Do you know how the information was assembled by Dr. Johnson? A. No, sir, I have no idea how the school records are kept.

Q. At the time you made this survey in '62, Mr. Burch, did you also inquire about the hiring of minority principals or minority assistant principals in the public school system? A. No, sir.

Q. Your study was devoted only to teachers? [1121] A. It was not a study. It was a request for information.

Q. Now, what prompted you to make that request? A. Because of the sudden interest in the fact that we were accused of not providing quality education for children.

Q. Were you also accused in 1962 of not hiring a sufficient quantity or proportion of minority teachers? A. No such accusation was ever made to me, sir.

Q. Did you ever hear any such accusation while sitting in on a School Board meeting? A. No, sir.

Q. You don't recall any efforts, for example, by the Urban League in the late 1950's, as soon as you got on the Board? Wasn't the Board constantly asked to hire more minority teachers? A. You say the late 1950's? I recall this matter did not come to my attention until February, 1962, when this whole matter came into being.

Q. So, between April of 1959 and April of 1962, you in your capacity as a Board member never heard a request that more minority teachers be hired? A. No, sir.

Q. All right. Now, what action if any did you take then, Mr. Burch, after you discovered, and I take it that what you discovered was that there was a relatively low [1122] proportion of minority teachers in the School District? A. In terms of percentage, it would be about 5 percent, yes, sir.

Q. And then what action did you take? A. I took none. It was not my function as a Board member to direct anyone what action to take.

Q. Did you make any recommendations to the Board? A. No, sir.

Q. Did the Board itself make any recommendations to Howard Johnson? A. The Board as a result—again, the equality—the Voorhees Committee had been authorized and the Board collectively indicated to the staff that they should attempt to secure more minority teachers. I as an individual never made any such recommendation.

Q. I assume you voted in favor of it? A. I did.

Q. Was that a unanimous recommendation? A. To my knowledge, yes, sir. Well, it was not on a vote. In other words, it was a unanimous recommendation, yes, sir. No one on the Board objected. It never came out to a roll call vote, because there was not a question of motion.

Q. During the period 1959 to 1967, can you describe for us the means by which you kept track of what was happening [1123] in the schools within the School District. A. Well, obviously, the main source of information was the continual reports of the Superintendent and staff with respect to the schools. Second, the visits or, I guess you call it visits, attendance at functions within all of the schools of the city. I did not—I was not a School Board member who—as a matter of fact, there were schools in the system which I have never visited—I was not one who was constantly visiting the schools, because I did not consider myself an administrative School Board member. Certainly, with the volume of reports and the consideration of the annual budget, a Board member is kept apprised of what is going on in the public schools, as well as the press and radio and TV.

[1124] Q. Now, as I recall, Mr. Burch, you were in the real estate business from 1930 to approximately 1968, is that correct? A. Yes, sir.

Q. Did that include both commercial and residential real estate? A. No, sir, that was exclusively commercial, office buildings mostly in the downtown Denver. Our firm was never engaged in residential real estate.

Q. Did you belong to any realtor trade organizations? A. Yes, I belonged to the Denver Board of Realtors and at one time was president.

Q. And you attended association meetings? A. Yes, sir.

Q. Did you at those association meetings acquire any knowledge of population movement of Negroes? A. Not at those meetings. I acquired that by my general knowledge of the city.

Q. And by 1955, Mr. Burch, do you recall whether you knew where the eastern boundary of the Negro population was at that time? A. I could not say it precisely but it was obvious that it had moved at least to Colorado Boulevard.

Q. In 1965? A. Where traditionally, when I came to Denver, it was [1125] confined at the so-called Five Points area, but I would observe that, by 1955, when I was not a school board member, when my property interests were exclusively office buildings by 1955, that the eastern boundary of the so-called Negro residential area had moved to Colorado Boulevard.

Q. Now, you're not telling me, Mr. Burch, are you that in 1955 the area north of City Park was predominantly Negro? A. Not predominantly, no, sir.

Q. But there were some Negroes? A. There were Negroes who were moving east of Colorado Boulevard—or east of York Street.

Q. Now, if we talked in terms of predominantly Negro neighborhoods, Mr. Burch, in 1955, where would you place

the line? A. Predominantly Negro? Well, I would say —I was serving in the House at that time with Representative Earl Mann. He lived at 2149 High Street, and the predominantly Negro area would have been from, I would say, 20th Avenue northward. In other words, Earl Mann at 2149 High Street was in the center of the predominantly Negro residential area in 1955.

Q. Now, it's true, isn't it, Mr. Burch, that by 1955 all of the areas west of York were predominantly Negro? A. I think High is west of York. They were predominant.

[1126] • • •

By Mr. Greiner:

Q. Mr. Burch, after you got the information regarding the proportion of minority teachers in 1962, subsequent to that time what we have been referring to, I believe, as the Voorhees Committee, it issued its report, did it not, in the spring of 1964? A. Yes, sir, final report. Preliminary reports were available to the board prior to that time.

Q. One of the findings—and that report is in evidence as Plaintiffs' Exhibit 20, Mr. Burch—and one of the findings of that report was that the district had been assigning minority teachers to minority schools. Do you recall that? A. Yes, sir.

Q. Was that the first time that you had been aware of that? A. Yes, sir. In other words, I as a board member did not know where any teachers were assigned.

Q. Now, you mentioned these lists of teachers which you approved in April of each year. A. Uh-huh.

Q. What information was on the lists? [1127] A. Only the name and, shall we say, serial number. There was no indication then as to whether they were—it didn't even have

whether they were— Of course, they all had to have B.A. degrees. That was a condition precedent to hiring.

The Court: Excuse me. I thought you said that—maybe I'm mistaken—that you asked Howard Johnson to furnish you with a number of minority teachers, you said, after the accusation was made that you were not providing quality education.

The Witness: That came— Judge, that came at the time of the creation of the Voorhees Committee.

The Court: Oh, I see.

The Witness: That was one of the reasons for the creation of the committee.

The Court: This was following the controversy about building a junior high school out there?

The Witness: In other words, that it was—it was raised that we would have poor quality education there and that is when I said, "Well, how come we're having inequality education?" That's when I first asked "How many Negro teachers do we have in the whole system, out of some 4,000?" And I found out roughly five percent.

The Court: Thank you.

Q. That event which you have just been describing took [1128] place in 1962, is that correct? A. Yes.

Going to your last question, this—

Q. The list of teachers. A. —the name and the employee number; no indication of— The only way you could determine sex was by the name.

Q. It did not list the undergraduate school which had been attended by the teacher? A. No, sir.

Q. Did it give the teacher's address? A. No, sir.

Q. Well, I take it then that the board didn't really exercise any discretion regarding the approval of these things? A. It was in compliance with the law that we had to approve, in effect, employment contracts prior to the 15th of April.

Q. From what you have told me, you had no information upon which to exercise any discretion? A. No, sir.

Q. That was left up to the school administration? A. That was an administrative function.

Q. Now, on your direct examination, you mentioned the difference in community viewpoints with respect to the utilization of mobile units at Smith and Stedman Elementary Schools. Do you recall that? [1129] A. Yes, sir.

Q. You said something about the question being less well framed at one school or another. Can you explain what you meant by that? A. Well, there were two separate questionnaires, one going to the parents of Stedman and one going to the parents of Smith. And they were not precisely the same question. One of them—the question at Smith was "Would you prefer busing children to eliminate overcrowding, or the addition of—the acquisition of new mobile units?"

The question at Stedman, "Would you prefer a permanent addition to the school, or busing?" So in that respect they were not the same. The question posed to the different parents were not the same.

Q. Now, what was the point in time that you're describing that these questionnaires were sent out? A. Let's see, it would be in the fall, I would say, of 1965, because the authorization of the construction at Hallett and Stedman took place in the spring of 1966. And was accomplished before I left the board. So I would put the point of time of this questionnaire at the fall of 1965, September, October and so forth.

Q. And in the fall of 1965 it is my recollection, and correct me if yours is different, Mr. Burch, that there had already been placed four mobile units at Smith—or at [1130] Stedman? A. Yes.

Q. And six mobile units at Smith, is that correct? A. That's right.

Q. Now, the parents at Smith were offered either additional mobile units or busing, is that correct? A. Right.

Q. And the parents at Stedman were offered an addition or transportation? A. That's right.

Q. What was said about the removal of the mobile units at Stedman? A. It was my understanding—and again I can't testify to my own knowledge now—but it was my understanding that the construction of the addition to Stedman, with the additional classroom space and the busing of one hundred some children, would make it possible to remove the mobile units at Stedman. Now, I have not been back to see—I could not testify whether there are still mobile units at Stedman, but one of the considerations was the small size of the school site. But the mobile units, as they were there—you say there were two?

Q. There were four. A. Well, in terms of space occupied, if the mobile units took up as much ground space as would the three-classroom [1131] addition to the building—

Q. Well, now— A. Furthermore, mobile units would take more play space.

Q. Yes, because they're just single-story structures, aren't they? A. That's right.

Q. So, by the time 1966 rolled around, you had twelve mobile units at Smith. Do you recall that? A. Yes, sir.

Q. They were taking up an awful lot of space at Smith, were they not? A. That's right, but that was—in Stedman the addition was the site, and apparently the administra-

tion felt that the Smith site was large enough to accommodate more mobile units. I sometimes wondered in my own mind if that were so because it looked like an Army barracks out there.

Q. Now, in 1962, Mr. Burch, when the controversy arose over the proposal to build a new junior high school in Northeast Denver at 32nd and Jasmine, how long was that proposal under consideration before it was scrapped? A. Well, it was first given for study to the board in February, 1962, and in effect it was never scrapped. It just—the hearings on it and the public discussion and the desire to create a committee—it was never acted upon. But [1132] it was never—in other words, it was never rejected. It was just never acted upon.

Q. Wasn't a resolution passed which was introduced by Mrs. Noel, Mr. Burch, whereby the board in effect said that they would not construct anymore new facilities in Northeast Denver? A. That was after my service on the board.

Q. That was after— A. I was present at the meeting. That was the meeting after June of 1967, the first meeting after I left the board. I attended the meeting as a spectator and that is the time when the board adopted the Noel Resolution about no construction. It would be June, 1967, the first regular meeting after I left the board.

Q. So the proposal was in fact scrapped? A. Well, if you take that as scrapping, yes. But it was not scrapped in April, 1962, or 1963 or 1964. It was still, you might say, a proposal on which action was never taken.

Q. Now, what were the factors to your knowledge, Mr. Burch, that caused the board to defer action on the building of that junior high school? A. I would say the main one was public protest. I think the board is more respon-

sive at least in my opinion to public protest on any policy than perhaps any other, because [1133] they represent the public generally.

Q. Generally, was there a principle which came out of that protest? A. Yes.

Q. What was it? A. It was the recommendation of the so-called Voorhees Committee—recommended and was adopted that school boundaries be hereafter fixed with respect to racial and ethnic considerations an in light of adopting that policy it would have been contrary to policy to have continued on with the construction of a new school at 32nd and Colorado Boulevard which admittedly would have been, in the main, attended by minority students.

Q. Now, did you see any difference, Mr. Burch, or was it discussed by the board, between the building of a new facility which you knew would be predominantly black when it opened, and the building of additions to existing facilities which you knew would serve only minority children? A. Well, there is a big difference. The new facility at 32nd and Colorado Boulevard was a junior high school. The policy of adding additions to elementary schools was to sever the children in that neighborhood. And that policy did not change. At the same time that we were building additions to Stedman and Hallett, we were building additions to McMeen, to other schools in the district. There was never [1134] any change in the policy of the Board of Education with respect to the building of additions to existing schools—small additions.

[1135] Q. That's somewhat inconsistent, isn't it, Mr. Burch? A. Not necessarily.

Q. Well, you decided, as I understand it, not to build the junior high school at 32nd because it would be a segregated school, isn't that right? A. Well, don't put words

in my mouth. The claim was made that it would be a de facto segregated school.

Q. Yes, sir. A. I would have to admit that it probably would have been so.

Q. There is no doubt in your mind, is there? A. All right, I will say there would have been no doubt in my mind, but Stedman and Hallett were already de facto segregated schools, and the construction of an addition to those schools made no change whatsoever in the composition of the children.

Q. Well, it placed those children who were placed in those addition, did it not, Mr. Burch, and put them into a black school? A. But they were already there. They were attending the school under double sessions.

Q. I see. You mean there was no change in the enrollment? A. No.

Q. During those years at schools such as Hallett? [1136] A. Certainly, there wasn't—there was a change in enrollment. Stedman School's enrollment increased from 600 in 1961 to over 900 in 1965 without any change in the area from the standpoint of additional housing.

Q. Yes. You mentioned that. A. They were on double sessions.

Q. Did that surprise you, that change, Mr. Burch? A. Yes, that did surprise me.

Q. Mr. Burch, that had been the history, had it not, since 1950, of the eastward movement of the Negro population, that it led to denser populations? That wasn't such a surprising result, was it? A. You say it had been the history since—

The Court: He means, I suppose, that it was predictable and thus it shouldn't have come as any surprise. You can comment on that, if you wish.

A. (Continued) Well, all I want to say about it is that this is the only existing area where within the existing boundaries of the school that the population increased by that percentage, and it was true with respect to Stedman School.

Q. It was also true— A. I certainly would in no way be able to predict it on the basis of any information available to me.

Q. Is that right? What happened at Harrington School, [1137] for example, Mr. Burch? A. Harrington—

Q. In 1950. A. When I came on the Board, Harrington School had increased in population and we were transporting children to Smith School. Columbine School was on double sessions, and the Board had adopted plans for the ultimate demolition of Columbine School and the starting construction of what we call a primary unit. When we got the primary unit done, things had changed with respect to special education that we didn't go ahead and tear down the old school, but the capacity in the new primary unit and the old school were then greater than the population, and the recommendation was made by the staff that we transport children at the Harrington School to Columbine School instead of to Smith School, which was growing. And we finally resolved the problem by building an addition to Harrington, and Harrington then dropped back to capacity, aided by the construction of Barrett.

Q. Do you recall that both Harrington and Columbine were extremely overcrowded in 1955? A. No, sir, I had no knowledge of their status in 1955.

Q. Well, what was the activity that you have just described? Wasn't it to relieve the overcrowding at those two schools? A. Now, did I understand you to say 1955? I was not [1138] on the Board in 1955. I stated that when

I came on the Board in 1955 and '60 that both Harrington and Columbine were overcrowded and on double sessions or extended sessions or requiring transportation.

Q. Now, had that increase in their enrollment come about as a result of new construction in their attendance areas? A. Of new construction in the attendance area of Columbine and—

Q. Yes, sir. A. To a degree in Columbine, yes.

Q. And what about at Harrington? A. Harrington, no. Harrington was on the edge of the industrial district, isn't it, 38th and Steele, and by the time you get to 39th and Steele, that's factories.

Q. Would you agree with me that what happened at Stedman had already happened at Harrington some five or six years prior? A. No, I will not agree with your—it is an assumption only.

Q. Now, you mentioned the alternatives given to the Smith and Stedman parents. Do you have personal knowledge of what those alternatives were? Were you present at those meetings? A. No.

[1139] Q. Did you see any written reports concerning them? A. I saw—with respect to Smith, I saw the questionnaires.

Q. Oh, you did? Did the questionnaire identify the school to which the student might be transported? A. No, sir, to my knowledge, not to my recollection.

Q. Now, during the period of time that you were on the Board, Mr. Burch, between 1959 and 1967, as a Board member, what information did you receive concerning levels of achievement in the Denver Public Schools? A. Only the triennial publication that was put out and had been traditionally put out since Dr. Oberholtzer became Superintendent. There was never any information given

to the Board as to the achievement level of any individual school, but, rather, in the aggregate of the schools of Denver.

Q. The type of report you have reference to is similar to Exhibit 82, is it not? A. Yes, sir.

Q. Yes. Now, when did the question of the equality of educational opportunity first—when was it first raised? A. It was first raised and charged at the time of the—at the recommendation to construct the junior high school at 32nd and Colorado Boulevard, first raised to my attention, first time I had heard of it. I had been on the Board roughly three years.

[1140] Q. Now, Mr. Burch, you knew about the triennial testing program at that time, did you not? A. Yes, sir.

Q. And did it ever occur to you to find out what the achievement levels were in these minority schools? A. No, sir.

Q. Did anyone in the School Administration volunteer that information to you? A. No, sir.

Q. And you never asked for it? A. I never asked for it.

Q. Do you recall when that information, that school-by-school comparative data, was first made public? A. I don't recall it was ever made public while I was on the Board.

Q. So, the program— A. I have seen references to it since my leaving the Board, but I have no information as to the achievement level of the school where my own daughter attended, and I never asked for it.

Q. Well, I take it that at Carson, Hill and what was the other school? A. George Washington.

Q. George Washington, you didn't have any qualms, did you, about the quality of the education your child was

[1141] receiving? A. I had no qualms about the quality of the education my child was receiving.

Q. Now, as a Board member, were you aware of the fact, Mr. Burch, that the School District was spending considerable money during your tenure on the Board for programs which I might colloquially call compensatory education programs? A. Yes.

The Court: What kind?

Mr. Greiner: Compensatory education.

The Witness: Compensatory education.

The Court: Oh.

Q. When did you first become aware, Mr. Burch, of compensatory education programs in the District? A. I can't recite the precise year, but I became aware of a compensatory education program installed at Cole.

Q. Cole Junior High School? A. Yes.

Q. What year was that? Do you have a recollection? A. Well, it would have to be a recollection. I can't state precisely. It was at the time of the—started at the time of the boundary change between Morey and the others. In addition to that—

Q. 1962? A. 1962. That was when an enhanced and enlarged, a [1142] greater compensatory educational program was installed at Cole, to my knowledge, and with my tacit approval, although it was never done—although it was done through budgeting rather than as a policy of the Board.

Q. Do you recall the nature of that program? A. No, sir, except with one respect. Compensatory education, of course, is based on a reduced number of pupils for each teacher, or two teachers for the same number of children

as in an ordinary course. That's the main thrust of the compensatory education, perhaps additional courses, emphasis on other things.

Q. You don't have any specific recollection? A. No, but I do know that the thrust of Cole was to reduce the teacher-pupil ratio.

Q. That can be done in two ways, either cutting the class size in half or adding another teacher. A. Quite right.

Q. Were you aware of any compensatory education programs in the District during your tenure? A. Yes, sir, in other words, the compensatory education, if that's what you want to call it, that arose as the result of the Voorhees Committee, where the Board beefed up, provided money, additional personnel, additional courses, at Smiley Junior High School and Baker Junior High School.

Q. Now, so, you have mentioned Morey, Smiley and [1143] Baker— A. Not—I made no reference to compensatory at Morey.

Q. I am sorry. Cole. A. Cole.

Q. Smiley— A. Cole on the Board's own, before the Voorhees report. Baker and Smiley as a direct result of a recommendation of the Voorhees Committee.

Q. And the first such program that you can recall was 1962? A. With respect to Cole.

Q. Did the— A. '64 and '65 with respect to Smiley and Baker, as a result of the Voorhees report.

Q. Now, do you recall, Mr. Burch, whether or not the School District received federal assistance in the funding of those projects? A. Well, beginning in 1965, yes.

Q. That was from the Elementary and Secondary— A. That was the passage in 1965 of the Elementary and Secondary Educational Act by the Federal Government,

and we finally—I can't recall when the appropriation was made, but I think in anticipation—I maybe better not say that. The 1966 budget adopted in the fall of 1965 first included additional ESEA money, which had heretofore not been available [1144] to the District.

Q. Do you recall the schools which were targeted to receive those funds? Were there any schools in addition to Cole, Baker and Smiley, to your recollection? A. Yes, by and large, the schools in the Platte River. In other words, Platte bottom, Fairview, Greenlee, the old one—Elmwood. I think that Kepner and Valverde qualified to a degree. Horace Mann, Bryant-Webster, Crofton-Mitchell, Wyatt, Wyman, Whittier. Those specifically were so-called target area schools.

Q. Did the School Administration report to the Board as to why the Administration thought these programs were required in those schools which you have just described? A. No, except in a general—that is where the so-called culturally and economically disadvantaged children, whom ESEA—the thrust was to provide greater facilities for education—that's where they resided. In other words, that was the guideline, obviously based on census tracts and figures on family income and consultation with the Welfare Department. There is where the economically and culturally disadvantaged children lived. That was the whole reason for those tracts.

Q. I take it that the money wouldn't have been spent in those areas, Mr. Burch, had those children been achieving satisfactorily in those schools, is that correct? A. I don't—I will not—the ESEA did not require as a [1145] condition precedent achievement. It was on the culturally and economically disadvantaged. Now, you can jump to the conclusion that they were not achieving, but you are not going

to have me so state, because the culturally and economically disadvantaged areas of this country is where ESEA money was channeled.

Q. What was the objective of the program, Mr. Burch? A. To enlarge the educational opportunities of those culturally and economically disadvantaged children, sir. That was the thrust of the whole national program.

Q. And that was never equated with achievement? A. It hasn't been equated with achievement yet. It had only been in operation for the calendar years of '66, '67, '68 and '69.

Q. Did you receive any valuations of these programs from the School Administration? A. No, sir, I never received any during my service on the Board, which was during a year and a half of ESEA operation. I have never received an evaluation of any increase in achievement during that year and a half, nor have I as a public official yet.

The Court: I think we might be able to save a little time. You were satisfied in your own mind that it was justified to use this approach?

The Witness: Yes, sir.

[1146] The Court: That there was some necessity for it?

The Witness: Right.

The Court: Doesn't that really answer your question?

Mr. Greiner: I think so, Your Honor, yes.

The Court: All right, let's get on with it.

Q. Mr. Burch, you were a resident in the City and County of Denver in the years 1955 and 1956? A. Yes, sir.

Q. Do you recall being aware of the controversy in

the community over the proposed boundary changes at that time? A. No, sir, I took no note of school affairs in 1955 and '56.

Q. You were in the legislature at that time? A. That's right.

Q. And you don't recall any publicity about a letter written to the School Board by certain legislators? A. No, sir, I do not.

Q. Now, I believe you said that it was in 1969 with the building of the proposed building of the junior high school at 32nd and Josephine that you first became aware of racial considerations, is that correct? A. I didn't say that. I said I first became aware—that was the first time that there appeared before the Board objections raised upon racial considerations. Obviously, I [1147] was aware of the racial—of the racial characteristics of this city, but the—there were never any—let me state this, the boundaries of Barrett School, for example, were set while I was on the Board. They were never set by the Board. They were done by administrative decision. I never received any complaint, written or otherwise, about the boundaries of Barrett School, but the first time, when the full impact of the racial considerations, the de facto segregation, that that would be a de facto segregated school, it then came out in the open publicly at the Board of Education at its hearings after the introduction of the recommendation that we consider building a school at 32nd and Colorado Boulevard.

Q. And your recollection is different from Mrs. Johnson's, is that correct? Mrs. Johnson recalled that the Board had received protests about the building of Barrett, its location, and the establishment of its boundary lines. A. That could well be, because I was not a member of the Board at that time, sir. The Board may well have received

protests about the building of Barrett when it was proposed for study, but the record shows the go-ahead order given January, 1959.

Q. So, when you came to the Board it was already built? A. For all intents and purposes. It hadn't been built, but it was decided to build it.

Q. When the question of equality of educational [1148] opportunity in minority schools was first raised or first called to your attention in 1962, Mr. Burch, did you have an opinion at that time as to whether or not there was a relationship? A. No, that was one of the reasons why I supported the formation of the Voorhees Committee, to get the facts if there was. I had no knowledge of it.

Q. What sort of indicia would you have looked to or did you hope to have come out of that committee report that might have helped you make a determination as to whether or not there was a relationship? A. I had no—I could not have instructed the committee to—as to what they should find. As a matter of fact, the committee—we had to provide—the committee drew its conclusions from the staff, and there was assigned to the Voorhees Committee certain members of the staff. I would have been incapable of directing anyone to give me the factors by which I could have found out if the quality of education was unequal.

Q. Well, the Committee did in fact issue a final report? A. In 1964, yes.

Q. Did it answer the question that you had hoped would be answered by it? A. Well, they made some 180 recommendations, all of which were directed to attempting to improve the quality of educational opportunity, and thereby improve achievement, but [1149] no one can say if any of those actually finally resulted in greater achievement of educational—not opportunity—but educational results.

Q. Now, there was a subsequent committee appointed, was there not? A. Yes, sir.

Q. Were you on the Board when it was appointed? A. Yes, sir.

Q. Do you recall the reasons why it was felt that it was necessary to appoint that second committee? A. Well, you notice the difference in name. One was a special study committee on the equality of educational opportunity and the other was an advisory committee, and I don't recall the full title, but the creation of the second was to in effect advise the Board and Administration in the formulation of methods rather than calling attention to unequal opportunities.

Q. Well, was the premise of the second committee, which was called the advisory council on equality of educational opportunity in the Denver Public Schools, was the premise there that inequality in fact existed in certain of the schools? A. Only as alleged or as demonstrated, whatever word you want to say, by the Voorhees Committee.

Q. Well, I take it that there must have been a feeling that there were some inequality problems or it wouldn't have [1150] been necessary to have an advisory council, would it? A. I think that's probably right, but you will note also that the second one was to be composed of representatives of—I forget the wording—of civil rights organizations, and, in other words, its composition was significantly different than the Voorhees Committee. The Voorhees Committee, as I recall, was twenty-four, three from each of the eight high school districts, plus staff. The Bird Committee, the second one, I can't recall the members, but in addition there were members not really residents in the high school districts.

Q. So, the composition of the second committee was somewhat more cosmopolitan? A. That's right. It brought in

the viewpoints of the civil rights organizations as members of the committee instead of what you call—obviously, they worked with the Voorhees Committee, but they didn't have a voice in the vote, as they did in the other.

[1151] Q. Now, if the first occasion, Mr. Burch, of your attention being called to racial considerations was the proposed junior high school in 1962 at 32nd and Jasmine, I take it the second such instance would have been the controversy which surrounded the proposed boundary changes at Cole, Morey and Byers, also in 1962, is that correct? A. Yes.

Q. And which came first? Do you have a recollection? Did the Cole-Morey matter come up after the junior high school? A. To my recollection—and I might possibly be wrong—the 32nd and Colorado Boulevard came up in February. The boundary changes with respect to Byers, Morey and Cole, they came up subsequently to that. Because again I think, sincerely, or I will state that one of the reasons advanced for building the new junior high school—and it was to be a modest size—was two purposes: number one, was to relieve the overcrowding at Cole, and number two, was to work to the point where they could eliminate Gove. No doubt in my mind that, had the building at 32nd and Colorado Boulevard been constructed, a substantial part of the Gove area would have attended that junior high school.

Q. In fact, there was a plan to close Gove down, wasn't there? A. Frankly, when I came on the board, they said Gove [1152] ought to be torn down. It's 700 capacity. It hasn't got this and it hasn't got that. And we ought to abolish it as a junior high school. And I think the construction of the new high school has had some bearing on the ultimate disposition of Gove.

Q. So the plan to— A. Now, going back to the boundary delineations, I personally—I personally received no objections from the change in boundary lines between Morey and Cole. I received a whole lot of objections, written, telephone calls and whatnot, against the extension of the inclusion in the Byers district of children who had previously gone to Morey and it was the same as you had everywhere, "Well, you're breaking your friends" and whatnot. A few little arguments about changes in the Grant-Byers district because they had to cross the Valley Highway and so forth and so forth. But there was no significant or rising opposition that ever presented itself to me or to the board at the time we adopted the boundary changes that you refer to.

Q. So that we can see, Mr. Burch, what the situation was in 1955, I am now showing you what's in evidence as Exhibit 416. In 1955 what was the capacity for Byers? A. For Byers? Capacity? This is 1955? I'm reading. 1355.

Q. And what was its enrollment in March of 1955? [1153] A. 1971.

Q. What was its projected enrollment the next fall? A. 1096.

Q. And at any point in time was it projected that Byers would exceed its capacity? A. No, sir, at no time.

Q. That projection which is Exhibit 416 goes up until which school year? A. 1961-1962.

Q. All right. So Byers was under capacity and it was projected to remain that way, is that correct, as shown by this exhibit? A. That's what the exhibit indicates, yes, sir.

Q. Well, in the exhibit—you recognize that as school district figures, do you not? A. I assume it is. April, 1955. I had no connection with the school district. Let me say this—and this is similar—this is the same as similar esti-

mated memberships that were given to me; the 1959 projection, on beyond these years. This is obviously a school district exhibit. But it is April, 1955.

Q. Now, that exhibit also lists the capacity at Cole, does it not? A. Yes.

Q. What is the capacity given for Cole? [1154] A. 1,908.

Q. 1,908 students? A. Yes, sir.

Q. And do you know what the enrollment was at Cole in 1955? A. No, sir, I have no idea.

Q. Handing you what's in evidence as Plaintiffs' Exhibit 215, the first column gives the enrollment at the various—Cole, Smiley and Morey. If you will look at 1955—what was the enrollment at Cole? A. 1,338.

Q. 1955? I beg your pardon. A. 1,401.

Q. 1,401. And you have just told us it had a capacity of 1,908, is that correct? A. That may have been true, sir, in 1955, but the capacity of Cole when the boundary changed was not 1,908. It was somewhat nearer 1,500 or 1,600. I am certain that the capacity of Cole Junior High School in 1962 will not show 1,908, at least for junior high school purposes.

Q. What had happened at Cole to your knowledge to reduce its capacity? A. Well, some of the facilities at Cole had been transformed from junior high use to special education use.

Q. Special education— [1155] A. And from the standpoint of the capacity comparing it with more than the others, we were dealing with the 30-a-room capacity normally associated with a junior high school class.

Q. The special education children were being bused in, weren't they? A. All special education children classes are transportation classes in the whole district, sir. There is no significance of busing into Smiley. They're also bused

into Evans. They are bused into Skinner. The special education is based on busing.

Q. We were talking, were we not, Mr. Burch, about Cole? Busing of special education. A. Obviously—I can't state as a matter of fact but it is my understanding that when you establish a special education center that it's unlikely that you have enough in the subdistrict and you thereby gather them together.

Q. Well, is it your testimony that in 1962— A. May I refresh my memory. It says "Capacity of Cole, 1,908, until 1960. 1961 to Present, 1,725."

Q. Is it your testimony then, Mr. Burch, that in 1955 that Cole was overcapacity? I believe that's what you said on direct examination. A. In 1955?

Q. In 1962. [1156] A. Well, in 1962—in 1962, with 1,725 capacity. 1961 was 1,932 enrollment. As a result of the boundary change, it dropped down to 1,654. 1,512 in 1963 and it has not been, to my knowledge, above capacity since.

Q. So, how much— A. Again, on the capacity, 1,725, sir; not 1,908.

Q. Yes. So, if the special education classes had not been there, what would the situation have been? A. Well, I'm certain that the 1,932 membership in Cole is junior high membership and not related to the—These were not necessarily special education classes of junior high age at these special education centers.

Q. Are you referring particularly to Cole? A. Anyplace. Special education classes are not necessarily based on age. We have special education classes that I have attended where you have children of all ages.

Q. Now, the school directly to the south of Cole was what junior high school? Morey? A. Directly to the south?

Q. Right. A. Well, to the southwest would be Morey, yes, sir; not directly south.

Q. What does Exhibit 215 show the situation to be at Morey in 1961? A. It shows that Morey had 894.

[1157] Q. Enrollment, and it had a capacity at the time of 1,170. So it was undercapacity, is that correct? A. Yes, sir.

Q. Now, as I recall the boundary change, an area was taken from the southern attendance area of Cole and given to Morey, is that correct?

Mr. Ris: What year, please?

Mr. Greiner: 1962 changes we're talking about.

A. Yes. In other words, it would be the south and west boundaries.

Q. How many students were moved? Do you know? A. No, sir, I have no idea how many were physically moved.

Q. You cited some figures about how much the enrollment went down at Cole. A. That's right.

Q. How much did it go down? A. From 1,932 in 1961, until 1963, 1,512. It went down 420.

Q. In a two-year period? A. In a two-year period, by these figures.

Q. What about the next year, right after the boundary change? A. 1,932 in '61; 1,654 in '62. That's a reduction of 278, and the final reduction, 420, which would, from that —[1158] and these were available to me—would have the objective of accomplishing a reduction in excess—the enrollment over capacity at Cole was accomplished in the two-year period.

Q. Well, now, Mr. Burch, would it have been possible to solve that very same problem by simply moving the special education courses to Morey from Cole? A. I suppose it

would have, sir, but that was not the question on which we were deciding.

Q. That was never even suggested? A. There are always—not to my knowledge, no, sir. There are always alternatives to anything. It's the one that has the general recommendation of the staff which is adopted.

Q. Now, during your consideration—the board's consideration of this proposed boundary change, Mr. Burch, you did say, did you not, that racial questions were raised about the Cole-Morey boundary change? A. No, sir, I did not say that.

Q. It's your recollection that there were no such questions raised? A. I said that I had no objection raised to me from any extension of the Morey boundaries to the northwest. I had a lot of static from people objecting to the moving of children formerly going to Morey, to Byers, primarily because of distance and associations. The racial question was never [1158] raised, sir.

Q. So your recollection is different from that of Mrs. Johnson, is that correct? A. If that is—Sobeit. That's my recollection.

Q. Do you recall her testifying about the receipt of petitions at board meetings protesting that change? A. I heard that but I could not from my recollection ever—and this could be adduced—any petition, sir, that was ever brought to the Board of Education, at least, when I was president, was always filed with the minutes of the meeting. I have no recollection of a petition signed by anyone objecting to the changes in the boundary between Morey and Cole.

Q. Now, did you have any knowledge, Mr. Burch, of the differences in the racial compositions of the areas which first were being moved from Cole to Morey in the one instance, and being moved from Morey to Byers in the other instance? A. Yes.

Q. You knew, did you not, that the area being taken from Cole and given to Morey had a different racial character than the area being taken from Morey and given to Byers, did you not? A. I did.

Q. And did you have any idea what the impact of those two moves might be on the racial composition of Morey? [1160] A. No. In other words, that was not a consideration sir. In other words, the attendance boundaries of the Denver Public Schools were never related to racial or ethnic considerations. That consideration was wholly on the number of children.

Q. Now, what you have just told me as reflected in Exhibit— A. Let me go on. There was, by Policy 5100; it was adopted subsequent to the consideration of the boundaries of Morey and Cole. And race and color did not enter into it nor did ethnicity.

Q. You seem to be making a distinction, I take it, Mr. Burch, between the board overtly using race or ethnicity as a basis for its decision on the one hand and instances where the board had brought to its attention questions of race and ethnicity on the other, is that correct? A. That's correct. But the board had not adopted a policy with respect to those things brought to their attention, sir.

Q. Now, as I recall, one of the recommendations of the Voorhees Committee was the establishment of a policy of limited open enrollment. Do you recall that? A. Yes, sir.

Q. Do you recall whether or not in the development of the program of limited open enrollment which was in March of [1161] 1964, as I recall, in the development of that program, was an objective of integration discussed as a possible objective of limited open enrollment? A. It was. Yes, sir. In other words, that was the suggestion; that we adopt a policy of open enrollment or of limited open enrollment,

was a direct result of the recommendations that every measure should be taken to achieve as much integration as possible.

Q. Now, you will recall, Mr. Burch, that the policy which defines the limited open enrollment policy—the written definition of that policy—it did not establish any conditions, did it, that the transfers under LOE have an integrating effect? A. No, sir.

Q. Was it discussed? A. It was hoped— It was hoped, sir, that that policy would achieve a better degree of integration. But there was no mandate about it. I will say, frankly, as a matter of personal opinion, I viewed the whole thing with a dim idea.

Q. Why? A. With a dim view.

Q. Why? A. I did not feel that it would be productive of any great degree of integration. And it was also putting burdens [1162] on parents by the fact that no transportation was at that time provided.

Q. Did you vote against that? A. So I will say, frankly, and state to the Court I viewed the idea of limited open enrollment with a dim view, myself, although I voted for it on the hope that it might accomplish something.

Q. Now, during the course of your tenure on the Board of Education, Mr. Burch, did you ever receive any information concerning teacher experience in minority schools? A. Teacher what?

Q. Teacher experience. A. No, sir.

Q. Did you ever acquire any knowledge during that time period while you were on the board that indicated to you that teachers in these minority schools tended to have less experience? A. No, sir.

Q. Were you aware of a higher rate of teacher turnover in these minority schools? A. Well, it's difficult to answer

yes or no. I was concerned with the teacher turnover in the whole system. But it was not, to my own knowledge—but it was stated that there was a greater teacher turnover in the older schools and in the schools in the minority area, wherever they might [1163] be.

Q. So, in your own mind, you didn't focus on teacher turnover in just the minority schools? A. No, because in the personnel reports that there was—while there may have been more teacher turnover in a Columbine, a Harrington, a Whittier, than there was in a Bradley, a Fallis, a Kunsmiller—it was therefore entirely too much turnover, in my opinion, all over.

Q. Now, there are two sources of turnover, at least that occur immediately to me: one is resignation of teacher, and the second is the transfer of the teacher. Is that correct? A. Did you say transfer?

Q. Yes, sir. A. That would not necessarily be turnover. Again, if I may refer to Mr. Fuller, Mr. Fuller came on the board in 1961 and joined with me and for the first time—at the time of the technical report, resignations and whatnot, we asked the superintendent to provide us reasons, and shortly after that time, in 1961, the personnel report given showing who resigned, also gave the reasons. Marriage, pregnancy, leaving city, husband leaving city, retirement, and whatnot. In other words, all resignations then were categorized. That was not available until after Mr. Fuller. He was strong for it and I joined him and we finally got that information. [1164] But transfers as between schools, that wasn't on this personnel report. In other words, it was not severing from what came on the report. What came on the report was the leaving of the district. But not moving from school to school within the district. So transfers could not be—while

they may have affected turnover in schools, they were not the turnover I was talking about.

Q. So you were talking about resignation-type turnover? A. I was talking about things which resulted in the teacher leaving the employ of the district.

Q. Now, from a standpoint of the school from whence the teacher was transferred, the effect on the school was the same, was it not? A. It could have been. But may I say that the only—I had no knowledge nor did I ever participate in any transfer of teachers from school to school. We also approved the transfers of a principal from this school to that school, and coordinator. But never did the board ratify, approve, or instigate transfer of a teacher from school—from this school to that school. That was an administrative decision, worked out with the teachers, so far as I knew.

Q. Were you aware of the written policy of the school district during your tenure, Mr. Burch, to the effect that a teacher would not ordinarily be expected to request a transfer until the teacher had been in a school for three years? [1165] A. I probably am aware of it. But it was one of those administrative policies with which I, as a board member, was not concerned.

Q. Did you see any educational benefit in such a policy? A. I repeat, I was not concerned with that administrative policy.

Q. So you didn't recognize that there is some benefit to be derived from having a stable membership of teachers in a given school? A. I repeat, sir, that a board member is not a school administrator. Those particular things are left to the administration. Even though, probably with the majority of the board, we could have changed it. But with obviously a big policy book—I skimmed through it and I

was aware of certain policies. But with respect to the one you mentioned, that was not my concern. I never questioned it, sir.

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[1166] *Cross-Examination by Mr. Brega:*

Q. Mr. Burch, looking first at the Cole-Morey change in 1962, I would like to have you take the Exhibits 398 and 399, and turning to the appropriate page—398 now would be the school year '61-'62 and 399 the school year '62-'63—I wonder if you would examine those and tell the Court, first, for Cole, which you said was primarily a minority school at that time, would you tell the Court what percentage of Cole in 1961 and 1962 was white prior to the boundary change. A. Forty-five—as of May 1, 1962?

Q. Yes. A. 45.0 percent, according to this statement.

Q. No, I am saying white. A. Oh, white.

Q. Anglo. A. Oh, well, wait a minute. This copy I have here shows Negroes, Orientals and Spanish. This is the elementary schools here.

Q. Yes. What you have to do here is you have 45 percent Negroes, right? A. You want me to do some subtraction? All right. Obviously, starting with 100 percent, the Anglo would be 10 percent.

Q. Ten percent in the year of 1961 and '62? [1167] A. As of May 1, 1962, yes.

Q. Would you look at Exhibit 399 and tell us what the percentage of Anglo was in Cole, January 1, 1963? A. This says that in January, 1963, it was 16.90.

Q. So, it increased the Anglo by 6.9 percent? A. That's what the figures show, yes, sir.

Q. Now, in looking at Exhibits 398 and 399, would you examine those two and tell the Court how the percentage

of minority students or black at Morey changed from the school year '61-'62 to '62-63? A. May 1, '62, the figure shows Negro 15.0 percent.

Q. Would you tell the Court what— A. January 24, 1963, the figures show Negro percentage 27.99 percent.

Q. So, the black enrollment at Morey after the boundary change increased by 12 percent?A. By 12 percent, yes, sir.

Q. Now, I want to go back a moment, if I may, to the teacher situation which Mr. Greiner dwelled upon. Isn't it a fact that during the time you were on the Board, a black person filed an action against the Board or a complaint in the Anti-Discrimination Commission or now known as the Civil Rights Commission, against the Board for racial and ethnic data on the teacher applicant forms? A. Yes, sir, that is true.

[1168] Q. And isn't it a fact that as a result of that these things were removed from the applicant forms? A. It came to our attention that a complaint of some—whatever takes place at the Anti-Discrimination Commission—a member of the Commission had filed a complaint with the Commission that we were—the school's records were discriminatory, and we had attorneys' conferences and what not, and finally it was resolved that the School District, No. 1, would remove from all applications the applicant's picture that came in traditionally and any reference to race, but it was finally agreed that the teacher who was a tenure teacher or a permanent employee, they would be left there, so we could identify quickly that this person was a Negro or Oriental or what the case may be. That did occur, although it never came into the general public—I don't recall ever having heard anything about it in the press, but it did occur yes.

Q. Then, at a subsequent time, I believe, after the Voorhees Committee, you began to get requests, recommendations, to solicit teachers on the basis of race and ethnic background? A. Yes.

Q. And isn't it a fact that when you got into this you found, for instance, that it was extremely difficult to find qualified teachers of Hispano background, for instance? [1169] A. Well, it was always difficult to get qualified teachers of either the Hispano or the Negro race, because of the competition. In other words, the same situation existed over the whole United States or over the State of Colorado, and, frankly, there was more demand for their services than there were numbers to be chosen. We were in competition to get a qualified Negro teacher or a qualified Spanish American teacher. We were in competition with school districts all over the United States.

Q. In other words, there was a great demand? A. So it was difficult. It was difficult to secure teachers of the minority, ethnic or racial minorities.

Q. Now, when you got to the problems in the Stedman-Smith-Hallett area, were all of these schools on double session or extended session at one time in this period of 1961, '62, '65, in there? A. To my best recollection, yes. When the enrollment of the school increases over its capacity, you have extended sessions. You have double sessions. In other words, you attempt to accommodate the children within the existing facilities, and, certainly, the thrust of the Administration and of the Board during my whole tenure was to eliminate double sessions where possible.

Now, I would have to answer, I believe, that the development of double sessions obviously required the putting [1170] of mobile homes at Smith, or mobile units. The

development of double sessions finally resulted in the mobile homes and subsequent addition at Hallett, and, likewise, at Stedman, and when the addition at Stedman and the transportation to the other schools—in other words, it is a known fact that there have been no double sessions at Stedman or at Hallett since the additions were built. There still may be, to my knowledge—I wouldn't know as to the present number of children in Smith. There may still be some classes, some grades and some classes on extended or double session.

Q. During this period when you had those mobile units, you also had four at Phillips and four at Park Hill. Now, these schools were predominantly Anglo, were they not? A. Yes, sir. They were prior to 1964. In other words, there were changes made in the elementary boundaries at Phillips, at least, subsequent to the Voorhees report, which increased the population of Phillips and particularly its minority population, but one of the problems that worried us at the Board is Phillips is a very small site and the construction of any mobile units there reduced the playground area. That was always our problem about mobile units.

Q. During the time you were studying whether or not to build additional capacity or bus people out or double sessions, isn't it a fact that you had received a report then from a special study as the result of the Voorhees Committee on [1171] whether people liked busing? A. Yes.

Q. Or liked the neighborhood school policy? A. Yes, sir.

Q. Isn't it a fact— A. Made available to the members of the Voorhees Committee and made available to the members of the Board of Education and the staff was a report which was confidential and never released publicly,

but it was in effect a study of questions and answers, a poll, shall we say, of many of the points that were under study by the Voorhees Committee.

Q. Now, I would hand you what has been marked for identification as Defendant's Intervenor's Exhibit U, and ask you if you can identify that document. A. Yes, that is the Confidential Copy No. 40 of a publication called, "The Equality of Educational Opportunity in Denver, Colorado," which was developed and authorized by the Voorhees Committee under the auspices of Research Services, Incorporated, and this came into my custody and my possession as a member of the Board of Education as the fortieth confidential copy. How many others, I don't know. That's the fortieth copy, which I have had at all times.

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[1173] * * *

Cross-Examination by Mr. Brega (Continued):

Q. Mr. Burch, in consideration of this Stedman-Smith-Hallett area and these changes that occurred in '66, had you examined and used the questionaire regarding the attitudes of Denver people toward busing Denver children? Had you examined this report and studied it on whether people were in favor or opposed to busing in the elementary schools? A. Well, we were aware—yes, a School Board member was aware of the response to his question, attitudes toward busing Denver school children.

Q. All right. Let me read the question. "Would you approve or disapprove a plan whereby elementary school children would be taken to different schools by bus so that no one school would ever have mostly minority group students?

Now, would you tell the Court, in the elementary school, what percentage of the Negro parents disapproved of moving by bus to another school? A. Forty-three percent.

Q. Did you also at this period of time take a poll in the Hispano or Spanish, as this is classified, and could you tell the Court what percentage of the Spanish people voted [1174] disapproval of busing in the elementary school? A. 61 percent of Spanish parents disapproved.

Q. Now, examining page 43, which goes into the question, as I will read it: "This card describes two different plans or ways by which children might go to school in this city. Which of these plans do you consider best for children in this city, elementary school or Grades 1 through 6?" And one is a neighborhood plan and the other is an open enrollment, and would you tell the Court what percentage of the Negro parents voted in favor of the neighborhood school plan? A. 71 percent.

Q. And what percentage of the Spanish parents? A. 79 percent.

Q. In favor of it? A. Yes.

Q. All right, now, were these factors that were considered by the Board when you looked at this overcrowding in this area as part of the viewpoint of the community? A. Not wholly. I was guided in my views on the Stedman situation specifically by communications which I received in writing and by telephone from parents in the Stedman School district.

Q. Well, isn't it— A. I asked why not come to the Board and make those things public, why call me alone, and they said, "We would—

[1175] Mr. Greiner: Your Honor, we object to the witness' hearsay statements.

Palmer L. Burch—for Defendants—Cross

The Court: Overruled.

Q. Now, counsel has questioned you on whether you anticipated the tremendous growth in the population east of Colorado Boulevard as far as the black population. The exhibit before the Court, S-1, reflects that between 1963 and 1968 the total black school population increased by 45 percent. Could you tell the Court whether or not you had any studies that indicated that this growth was coming? A. What was the time period, sir?

Q. Between '63 and '68, or up until you left the Board. A. In other words, it is not an official census. No. The Board recognized, of course, the constant increase in the—we became aware of a large increase in Negro population in Denver Schools upon the census of 1960. It was apparent in the years since there has been a steady increase. Now, you say, were we aware that it increased 45 percent in five years?

Q. Or anything near that percentage? A. Well, only by figures that you might read on—for other purposes. We ourselves knew it was increasing, but I had no knowledge it increased 45 percent.

Q. Well, as a matter of fact, were you not concerned about the number of students that were going to schools in this particular northeast Denver area? [1176] A. Yes. In other words, as I have stated, it was a unique thing in my experience with public schools that an increase would —such an increase would develop in an area already developed. By that I mean when we add a newly annexed area where the developer was still building houses, you never knew how many kids were going to come from any house; but in an area which was built up, where there was no new construction—apartments, as you are all aware,

apartment construction, that's what's affecting central Denver. That causes the school enrollment to go down, because children of lower school age traditionally don't live in apartments.

Q. Well— A. But I was—what's the word? This surprised me, that growth in an established area.

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[1177] (Following a recess, the trial resumed at 2:05 p.m.)

By Mr. Brega:

Q. Mr. Burch, prior to lunch we were discussing the Stedman, Smith, Hallett situation about 1966. During this period of time when you were concerned with the problem of overstudent population in these school areas, was there any discussion when you were talking about building or objection from the community on the basis of race or ethnic background? A. Yes. The answer to that is yes. There was objection stated that the addition to a school which was already preponderantly Negro enrollment would insure that that would continue to be a de facto segregated school. But there was also support given—to me, expression of support given to me for the construction of additions at both of these schools in the—by people in the District.

Q. Now, isn't it a fact that in the Smith subdistrict the majority of students there at that time were black? A. I was led to believe that that was true, yes, sir.

Q. And yet the parents of those students wanted mobile units rather than busing out of the subdistrict? A. Well, the question was not posed to them as to additional construction. It was never proposed that an addition be made

to Smith School, per se. The question there was additional mobile units to increase the classroom capacity, or busing. And, the preponderance of opinion of those [1178] particular people was more mobile units, no busing.

Q. Now, at the time that that was brought up to the Board, do you know whether the Board voted unanimously in favor of more mobil units at Smith? A. I can't recall precisely, but I would believe from my recollection that notwithstanding the no votes on the construction of permanent additions, I would recollect that the vote on the question of acquiring the requested number of mobile units, I think, was wholly affirmative. I don't recall of a no vote on the acquisition of additional mobile units at Smith School.

Q. And Mrs. Noel and Mr. Benton both voted in favor of that? A. That's my recollection. They both voted no on the Stedman-Hallett permanent additions, but I recollect as being president of the Board that it was a unanimous vote finally on the acquisition of additional mobile units at Smith.

Q. And it was also a unanimous vote of the decision of busing students out of Stedman, isn't that right? A. Correct.

Q. One hundred some students? A. Correct.

Q. And they were bused, were they not, to predominantly Anglo schools? A. Yes.

[1179] Q. Now, I want to cover just for a moment this annexation with you. Did this create a real problem for the Board during the time—the period of time that you were serving? A. It certainly did. The projections of the Board prior to my being on it had built schools, at the then outlying boundaries of Denver, and a good example is Pitts School at Hampden and Grape, or what not, was

on the then boundaries. Then annexation took place in Hampden East and Hampden West and Golden Key and what not, with the result that we, under the laws pertaining to annexation, it became our obligation to immediately provide schooling facilities for those children, and they couldn't attend the nearest school because it was already full. But, during my service the annexation of the so-called Bear Valley addition and Bear Valley West, the addition—the annexation of Fort Logan and the property south of Fort Logan, Centennial Estates, or something, and the annexation in the south and east of Thomas Jefferson High School, they certainly posed problems for us.

Q. During the time that these annexations were being sought by the City, did they ask School Board's opinion on this or seek your advice? A. The practice was that the City Planning Office would deliver to us the proposed annexations; the proposed developer's plans on it. And would ask us to make an estimate of the number of children that might result from that annexation. [1180] But, as the annexation usually went through, we had—we thereupon had the obligation of educating the children.

Q. Well, these areas that were annexed didn't for the most part have any schools, did they? A. Yes, they had schools. But, the children in the annexed areas to all of southeast Denver attended schools in the Cherry Creek School District. But, the school laws, a resident of a school district notwithstanding the fact that this annexed area might contain a school within it, the children could no longer go to that school; they had to attend Denver schools. So, sure, they had schools there in most cases that they were attending, but we had to provide schools over and above what they had. They could not go to the Cherry Creek schools after they became residents of Denver.

Palmer L. Burch—for Defendants—Cross

Q. As these situations developed, I recall that in 1965 both the Fort Logan annexation and the Centennial Estates were deannexed by court order. A. That's correct. We acquired the children immediately upon annexation, although I can't say immediately but at the beginning of the next semester or at the beginning of school year by arrangement and understanding with the existing school board, but in those two cases we had children who became our obligation, who subsequently were deannexed and became Sheridan's obligation and then finally became our obligation. And with respect to the Fort Logan and Centennial Estates [1181] annexation to which you refer—

Q. Did you ever have occasion to go to the City Council and object to annexation? A. Yes, sir, I appeared before a City Council meeting at one time when an annexation was proposed. I think it was the Centennial Estates annexation. And vigorously protested on behalf of the Denver Board of Education and the people of Denver in my representative capacity that this was an unwise annexation to the City of Denver and should be turned down that night.

Q. As the result of this service on the Board and your service in the legislature did you propose any legislation concerning who had a right to object or to veto an annexation? A. I did twice in 1963. I personally introduced a bill into the general assembly to provide that no annexation to the City and County of Denver should be valid except as approved jointly by the Council and the School Board. The bill went nowhere. In the year 1967, I succeeded in having a bill introduced under another representative's name, and it was passed and became law. And since that time, in the spring of 1967, annexations to Denver must be approved jointly by City Council and by the Board of Education.

[1182] Q. Now, did the annexation of Montbello area

have any effect upon the Smith-Hallett-Stedman area? A. No.

Q. How did they go to school in the Montbello area? A. Well, Montbello started slowly and projections were made as to the number of school children there, but, obviously, Smith School was the closest in terms of geographical distance, but there was obviously no point in busing—they had to be bused to a school from out there. The final solution hasn't been developed yet, but the developers finally entered into an agreement whereby they agreed to construct one of their typical residence structures in the shape of a school building, and the District leased it for a certain period of time and that's the schools in Montbello today. You might call them cottage schools. They are certainly not comparable to other schools, but to my best knowledge, in the smaller or lower grades, kindergarten, first and second, they try to take care of them there. I think the children third through sixth are being bused to other schools in the system, but not to any Park Hill Schools, because of the capacity already—

Q. Now, the financing of the students, the new students coming in, could you tell the Court what the revenue sources are for the School District? A. Well, the revenue sources of the Denver Public Schools are like all other schools in Colorado. The primary [1183] and major source of revenue for operating schools is derived from a property tax imposed on all the taxable property in the district at whatever rate of levy the School District determines is necessary. Since 1947, there has been state support of education which results from appropriations made to the Department of Education, which is distributed to all the school districts in the state under a complicated formula which attempts to determine need; and then, of course, more

recently, the money coming directly to the school district from what we call the Public Law 874, the so-called impact area, where the Denver schools get approximately $1,300,000 a year as the result or by reason of parents working at Lowry and working in this building and the Post Office and what not. We get that without restriction. There is no restriction imposed by the states with respect to state aid except that no part may be used for capital construction purposes. We may not use any state money for the construction of the school building, and the ESEA money for Denver's district received in 1966 was somewhat less than two million. None of that could be used for buildings, although it could be used for equipment.

So those are the sources of revenue. And the major one, of course, is property taxes.

Mr. Brega: Your witness.

Redirect Examination by Mr. Ris:

[1184] Q. Mr. Burch, was LOE, limited open enrollment, an outgrowth of the Voorhees report? A. Yes, sir.

Q. Before LOE actually went into effect, do you know whether Dr. Oberholtzer or anyone else made a trip to the East to investigate the operation of such a plan? A. Yes, during the insipiency of the Voorhees Committee and prior to its creation, Dr. Hinderman, at least, was sent especially by the Board to review what had taken place in Detroit and other eastern schools. The limited enrollment, limited open enrollment, we were told, had been utilized some place, and we sent representatives—I remember specifically Dr. Hinderman, although there may have been others in the staff, but they came back to report to us as best they could what had been the results of limited open enrollment in other districts.

Q. It was on the basis of the Voorhees report and these reports that you then adopted it? A. That's right. Now, as I stated before, I went along, although I was not convinced on the basis of the evidence that it would have any material effect on the situation.

Q. With respect to the finances, are there any limitations of the state law pertaining to increase in operating budget? A. Yes, beginning, yes, with the last legislature, [1185] in adopting the new School Foundation Act, since it was advanced by the school people and by the legislature and all as something to in effect put a cap on the ever-increasing property taxes, there is a provision in the school district law or the School Finance Act that a school district may not increase its expenditures in excess of 106 percent of the previous year's expenditures except by a vote of the people.

By regulation of the State Department of Education, it has been a little different than what the legislature intended it, but that bill is now before us in its limited session, and in the fall of 1970 it is my feeling, my view, my judgment, that a majority of the school districts in the State of Colorado, are going to have to go to the people to have their operating budgets approved.

Q. What is the principal source for capital construction funds? A. The only source prior to 1945, the only source of capital construction by school districts was bond issue. In 1945, the legislature saw fit to adopt what they call the post-war planning levy of one mill, which authorized every school district in the state to levy one mill for the purpose of catching up on construction they had to forego during the war. That remained at one mill until 1963. In the 1963 session, I, as a member of the legislature and also as a member of the Board of Education of Denver was succes-

ful in [1186] having the state law modified so that a district having a valuation in excess of $250 million, of which there are only two in the state, Jefferson County and Denver, could impose a two-mill capital reserve levy. That was done in the year 1969 again. That rate of levy has been applied to all districts in the state and under law now all districts in the state may levy two mills on the valuation of their property for capital reserve construction purposes.

Q. Is that sufficient to do away with the necessity for bond issues? A. No, sir, it is only a supplement to bond issues.

Mr. Ris: That's all, thank you.

Recross-Examination by Mr. Greiner:

Q. This preference that was expressed by the students at Smith for mobile units, had the parents at Smith at that time been advised of the comparative levels of achievement at Smith? A. Let me go back. It was expressed by the parents of students at Smith, not the students at Smith.

Q. Pardon me, had the parents been advised of the achievement level at Smith with comparison to other schools? A. Not to my knowledge, because I don't think —as I testified earlier, as a Board member as I was not aware of the achievement levels of any schools in the District, and I [1187] doubt very much if it were not available to members of the Board that it were available to the parents.

Q. You said the parents at Smith, there was no promise held out to them that there would be any permanent addition at Smith? A. It was not proposed. It was never advanced that a permanent addition to Smith would be made.

Q. Yet, I assume you agree with the Voorhees report, which said that mobile units should only be used on a temporary basis? A. It being a recommendary and advisory report, I am not required as a Board member to agree with any such report.

Q. Did you conceive of the mobile units at Smith being permanent? A. No, mobile units by their nature are temporary, but it can be defined as one school year or longer.

Q. By February, 1966, there were twelve mobile units at Smith? A. Correct.

Q. When was the first time that mobile units were removed at Smith? A. I could not testify that any mobile units have ever been removed at Smith, sir.

Q. Now, you will recall, Mr. Burch, that I showed you Exhibit 396, which showed that Cole had a capacity of 1908 [1188] students in 1955. Do you recall that? A. That's what you have here, yes, sir.

Q. Or that's also on Exhibit 215? A. Yes, sir.

Q. Exhibit 215 shows, does it not, that the capacity at Morey was reduced? A. It shows that—

Q. At Cole, I am sorry. A. It shows that the rated capacity of—are you talking about membership or capacity?

Q. Capacity, sir. A. The capacity of Cole in 1955 was 1908. The capacity of Morey until 1955 was 1446, and after 19—at a later date, the rated capacity of Cole became 1725 and the rated capacity of Morey became 1170.

Q. Now, I believe you indicated that that reduction in capacity at Cole was caused there by an increase in its utilization for special education, is that correct? A. I could not testify to my own knowledge, but when I—having seen these figures, which incidentally I am—in this exhibit, I would surmise that it was used in preparation for the

1966 bond issue; but when I raised the question how come Cole, which formerly had a capacity of 1908, is now 1725, the answer was that we still have the same number of rooms but the use to which certain rooms are being put, with a lesser [1189] number of special education children than other children, that has resulted in the capacity, and the same was true at Morey.

Q. Now, back in 1955-56, when Cole was rated at 1908 students, do you know how many special education students — A. No, sir, I don't.

Q. —were going to Cole? A. I can testify to nothing that occurred in 1955.

Q. But it is your testimony that you think the number increased between '55 and '62? A. The number of special—

Q. Yes. A. I am led to believe that's true.

Q. I am handing you what has been marked for identification as Plaintiffs' Exhibit 421, which purports to be the principal's report from Cole Junior High School in the school year 1956. Can you identify that for us? A. No, sir, this happens to be Morey.

Q. I am sorry, here is the one for Cole, Exhibit 420, excuse me. A. Yes, this is—I would say that this is the principal's semi-annual report of the operations of Cole Junior High School for the school year '56-'57.

Q. It shows the number of special education students in the school, does it not? There is a special column for it? [1190] A. Special education, yes, sir.

Mr. Greiner: Your Honor, we offer Plaintiffs' Exhibit 420.

Mr. Ris: No objection.

Mr. Brega: No objection.

The Court: Received.

(Whereupon, Plaintiffs' Exhibit 420 was received in evidence.)

Q. Referring to Exhibit 420, how many special education students were going to Cole in 1956, Mr. Burch? A. I assume the last column, "T"—

Q. Is the total. A. Forty-four, membership on last day of semester, 44.

Q. So, there were 44 special education students in Cole in 1956, and at that time it had a rated capacity of 1908 students, is that correct? A. It would appear so on the record.

Q. I am handing you what has been marked Plaintiffs' Exhibit 422, purporting to be a resume of the annual principals' reports for the school year 1962-63. Can you identify that for us? A. Yes, sir.

The Court: This is still Cole?

Mr. Greiner: Yes, it includes Cole.

A. (Continued) I would identify this as a school [1191] document. As to whether or not—I might say this is the first time I have ever seen a summary of the annual report of principals, because they were made to the Administration and not the Board.

The Court: This is probably prepared by the staff of the School Board, anyway, isn't it?

The Witness: Yes.

The Court: I mean, this summary.

Mr. Greiner: Yes, Your Honor.

The Witness: Your Honor, that's the first time that I as a School Board member ever saw a report

of the principals, because there was not a report that came to the Board but rather to the staff.

Mr. Greiner: We offer 422, Your Honor.

[1192] Mr. Ris: No objection.

Mr. Brega: No objection.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 422 was received in evidence.)

By Mr. Greiner:

Q. Now referring to Exhibit 422 for the school year 1962-63, there is a column for special education, is there not? A. There is.

Q. And if you will look at the line for Cole Junior High, Mr. Burch, how many special education students are in Cole Junior High School? A. It says 71.

Q. So in other words, betwen 1956 and 1962 there was an increase in special education students at Cole, approximately thirty-six students, is that correct?

Mr. Brega: Object to the form of the question, if the Court please. The exhibits say that only in the years of 1956 and 1962 those were the numbers. The exhibit does not show what happened in the intervening years.

The Court: True, but—

Q. Comparing the two years, what was the increase? A. Well, again, the question is misleading.

The Court: Never mind. I'll take care of that.

The Witness: One report was—

[1193] The Court: You just answer the questions as they come up, and if there's any objections, of course, I'll rule on those.

A. As between the two, it shows an increase of 27 students. But, one is for a full year and one is for a half year.

Q. Now, 27 students and—and yet the difference in the rated capacity of that same school for those two years is the difference between 1908 students which was its rated capacity in 1956, and 1525 students which was its rated capacity in 1962, is that correct? A. Yes, sir. The mathematics of what you say are correct.

Q. So that for 35—or 27 more special education students they reduced the capacity of the building of—by 173, is that correct? A. That's apparently what happened.

Mr. Greiner: No further questions.

Redirect Examination by Mr. Ris:

Q. With reference to Exhibit 420, on the 1956 matter, you said something about there may have been the study in connection with the bond issue. What was meant by that? A. That is with respect to Plaintiffs' Exhibit 215. In other words, I have never seen this form on the capacity [1194] of schools come in this form.

Mr. Greiner: Your Honor, so the record is clear, 215 was prepared by plaintiffs. It is not a school district document.

Q. You have never seen such a document? A. No, sir, I never saw it in this form.

Q. And you have never seen Exhibit 240 before? A. No,

sir, I have never seen a principal's semi-annual report. They never came to the board.

Q. And have you ever seen Exhibit 422 before? A. No, sir, I have never seen the summary of annual reports of principals.

The Court: These were not presented by him.

Mr. Greiner: Very definitely not, Your Honor.

The Court: These consolidated principals' reports?

The Witness: But these, Your Honor, were never submitted to the board either individually or in pamphlets. I have never seen these reports before.

Q. So what you're being asked to prepare now is something that has just been put before you? That's nothing you have any background or any knowledge of? A. Obviously these were in existence but they never came to the attention of the board. I have never seen these reports before.

Q. Now, with regard to the different figures with [1195] respect to the capacity of Cole, do you have any personal knowledge as to the reasons for the variances as shown by these documents that Mr. Greiner has called to your attention? A. No, sir, I have no— All of the change in the rated capacity in the principals' reports were before my time. I had to start in with no knowledge that the capacity of Cole Junior High School was 1725 students.

Q. Is it true that special education classes can make a difference in capacity? A. They can. Special education classes traditionally do not have the same number in them. In other words, a class would be 30. A special education class, depending on the degree of handicap, could be 5, could be 8, could be 15. But, never more than 20.

Q. Well, is it correct, Mr. Burch, your testimony before lunch in which Mr. Greiner led you along concerning special education as a possible reason for changing a capacity—

Mr. Greiner: I object to the form of the question as leading, Your Honor.

The Court: Overruled. It is redirect and he can clarify to some degree. We will give him some latitude on that.

You don't object to his referring to your question as being leading, do you?

Mr. Greiner: I believe it's an accurate statement, [1196] Your Honor.

The Witness: Let me say that special—in special education, whether it is hearing, the blind, lame, speech, is a very sensitive thing, and the board of education in Denver and the Denver Public Schools have constantly sought to enlarge the opportunities for the education of those, that class of pupils, and I did not state from knowledge that I knew that additional classes were at Cole, but always the plea of parents of handicapped children, "Give us more education."

Q. Very well. So you were testifying that special education classes would be one possibility for a change in capacity? A. Yes, we always sought to enlarge our special education classes.

Q. But not that you knew from your own knowledge that that was the reason for these differences in capacity? A. Correct.

